Public Utilities
FORTNIGHTLY

VOL. XI; No. 6 MARCH 16, 1933

The Rebellion of the Taxpayers against the Politicians

Its significance to the utility industry

BY HERBERT COREY

IT is possible to look directly at a fact and not see it. This is true of rubber peas, hidden aces, and the mysterious operations of taxpayers.

I have with these eyes seen taxpayers in revolt. I have seen them separate politicians from their jobs with the finality expressed in that dynamite explosion at Black Tom some years ago. Immediately afterward I have watched other taxpayers go through the same sequence of ignorance, carelessness, silence, and eventual massacre, and have not seen what was going on. This would be disheartening if I had not long ago become reconciled to myself.

GEORGE B. Cox was at one time the boss of Cincinnati. His taxpayers did everything except wear ivory rings in their noses. The courts were as crooked as some of the streets were after dark; county office was a graft; city office was a melon that renewed itself after each split, and the few complainants were beaten up or taxed out or ostracized or excommunicated. Then E. W. Scripps took a hand. Among the several newspapers he owned was the *Cincinnati Post,* which was then about as moribund as the third Caesar, counting from the right. The only subscribers of the *Post* who could be identified sat on stoops in their shirt

sleeves on summer evenings and drank their beer out of cans. Among Scripps' executives was Harry M. Rickey.

"Harry," said he, "go down to Cincinnati and either bust the *Post* or smash Cox."

For a time it looked as though the *Post* would die under a bush some dark night. It shrank to the dimensions of a damp rag. Its reporters were beaten up and its editors threatened. Merchants came hossing in to demand that their advertising contracts be canceled. They could not respect themselves, they said, and continue to support a paper which was false to every tradition of decent journalism. The business department of the *Post* was noisy with protest. But the *Post* was one paper which was managed by editors and not by advertisers. Rickey played a trump:

"Tell 'em," he said, "that we will cancel the contract of every merchant who asks for it. On the same day we will carry a story on the first page, in double-leaded black-faced type, telling who he is and why he did it."

Only one man canceled.

Even in that dark political age the taxpayer was sore about what was being done to him. But he did not know how to organize. Or he did not dare organize. A Cincinnati taxpayer who made too much noise about his wrongs might be taken down under the railroad bridge and pounded with stones. Yet the merchants preferred to risk the anger of Boss Cox's janissaries to the silent boycott of their customers. Somewhat similar history was written in other cities and yet most of us looked on these events as purely local phenomena. Presently we forgot them.

Two years ago no one could have made me believe that taxpayers could revolt. I had seen them revolting and I had forgotten. Taxpayers seemed to be all patient endurance and no spine. The few who did rebel were of the least lovable sort. They were inclined to be lean and excitable and were lonely men. One of them would rise at a meeting of the board of estimate or the board of aldermen or whatever the local board of money tossers might be named:

"Mr. President. . . ."

The routine never varied, although it was not identical in all cities. Sometimes the protestant would be wisecracked off his feet. That was Jimmy Walker's method in New York. The newspapers always took a humorous view of these incidents. Sometimes the sergeant-at-arms made the kicker take his seat. Sometimes an indignant alderman would bellow city pride until someone moved that the meeting do now adjourn. The other taxpayers present, if there were any present, invariably looked on the objector as a nuisance. They scuffed their feet when he rose.

"There," they would say, "is that crank. . . ."

The tax-eaters went on spending the taxpayers' money. By and by every ninth man had some kind of a public job. Two years ago the Alexander Hamilton Institute estimated that $22.50 of each $100 of the national net income went to the payment of Federal, state, and local taxes. Since then the national net income has decreased. The taxes have mounted,

except in a few isolated localities, and the proportion of the national net income taken for taxes has, therefore, been increased. Politicians as a class have but one remedy for a shortage of state funds. That is to levy more taxes. It has never occurred to any one of them—if I am unjust to an individual I beg his pardon—to cut down state expenses in any really effective way.

If such a thing did occur to him he would not be a politician. Politics is a business and politicians stay in by getting their organized constituents what they want. If those who want jobs and contracts and concessions are able to organize effectively, then the politician is for them one hundred per cent. This is said in no bitterness but merely in recognition of a fact. We may dislike a thunderstorm but we do not get angry at it. As a sop to those who demanded that public expenses be reduced they have cut salaries here and there, and sold a few old horses. No politician ever dreams of making any permanent change. It is always understood that as soon as the tax money begins to come in again the order will be "as you were."

THEREFORE the taxpayers have started to rebel against the taxeaters. They have rebelled most successfully, too.

This fact may not have been recognized by the casual reader of the newspapers. In every case, so far as I am able to discover, they have won their fight for lower taxes when they were organized and intelligently led.

One of the extraordinary battles in the rebellion of the taxpayers was fought in the state of Washington.

That state for a generation has been filled with do-gooders. Most of them were earnest, sincere, and honest, but back of them was a body of what Theodore Roosevelt once called practical men. Between them they filled the state with culture and sanitary plumbing, and jobholders.

"The tax rate is too high," said the taxpayers, modestly.

"But it cannot be lowered," said the do-gooders, wrinkling their foreheads. "We must have the money for our new fretwork institute for backward old men."

They forgot that when you haven't got a penny you cannot buy anything: The taxpayers took the penny away. Under the state Constitution it is possible for the citizens to initiate legislation. If a law is accepted at the polls it cannot be legislated out again for two years. Not to go too deeply

¶ "UTILITIES *get all of their revenue from the users of their service. If a given quantity of electric current can be delivered for $90, and the state tacks on $10 in tax, then $10 in tax is concealed in the bill for $100 the consumer ultimately pays. This fact has been obscured by the politicians for their own purposes, but in the state of Washington and in other states and in many cities the current user has discovered it.*"

into the situation in Washington, a law was enacted by popular vote limiting the general property tax to forty mills for all purposes. An income tax law was also enacted, but it may be ignored, for it carried so many exemptions that it will not produce much revenue.

The net result is that the income disposable for doodads has been cut approximately in two. The proper functions of the state will not be starved, if the actual business of governing is distinguished from the new-grown crop of extra-functional extravagances. Governor Hartley was defeated for reëlection when the political volcano blew its head off, in spite of the fact that he had stood so soundly for state economy that the ordinary revenues of the state paid its costs of operation. It was the extravagances which had been tacked on which had boosted the taxes higher than Popocatapetl. Incoming Governor Martin is a business man and as firm in demanding state economies as was Hartley.

THE number of office- and job-holders in the state of Washington must, under these conditions, be decreased approximately by one half. It is the hope of the taxpayers that at the end of two years the citizens will have learned to like the new low taxes and will not again give the politicians unlimited money to spend. But when the sun comes down out of the heavens in this way and begins to play with its tail, the first thought of the politicians is to find some new way of getting the money. If they cannot maintain their organizations their organizations will not maintain them. No politician ever realizes that it is not the label on the conscripted dollar that angers the taxpayer, but the fact that the dollar has been taken from him. One of the standbys of the politicians has always been the utilities.

"When in doubt, soak the electric light company," has been a standing rule of the game.

But the state of Washington taxpayer is awakening to the fact that a tax on the utilities is a tax on him and he does not like it. For years he has been told that whatever could be taken from a utility was gravy and even yet a good many of him believe it. But conditions have compelled the Washington taxpayers to think as well as merely listen. He has learned that the average tax paid by electric light and power companies in the United States is about ten per cent of the gross income; on the Pacific Coast some pay as high as 11 per cent of their gross. Not infrequently they pay more to the state in taxes than they pay in dividends to their stock and bondholders.

UTILITIES get all of their revenue from the users of their service. If a given quantity of electric current can be delivered for $90, and the state tacks on $10 in tax, then $10 in tax is concealed in the bill for $100 the consumer ultimately pays. This fact has been obscured by the politicians for their own purposes, but in the state of Washington and in other states and in many cities the current user has discovered it. He may pay no property tax. He may have no assessable income; his only real estate may be on his boots. But ten cents

The Present Difficulty in Raising Money for Governmental Projects by Bond Issues

"THERE are no public funds of the United States just now. They have all been spent. The only way in which money could be raised for the St. Lawrence proposition, or for any other proposition involving public ownership of any utility whatever, is through the issuance of bonds. It has been pointed out that the taxpayer has somewhat belatedly discovered that it is he who pays for the bonds and he does not like it."

out of every dollar he pays for electricity is a tax and nothing but a tax. If he uses a telephone he pays the state $5 a year for it. Every buyer of gasoline or coal oil or lubricating oil gives from 7 to 10 cents to the state when he spends a dollar.

The advocates of municipal ownership have secured a hearing for their theory on the ground that the drain on the ratepayer's pocket is lessened by the public ownership of plants.

It is easily demonstrable that this is not true.

In 1931 the companies producing electricity paid $210,000,000 in taxes. Every dollar was a tax laid on the user of electricity. It is evident that if these companies were owned by the public and, therefore, paid no taxes, a gap of $210,000,000 would have been left in the state's revenues. Some one must have been called on to fill it and the only one callable is the taxpayer. Not a dollar ever goes into the treasury of a state that is not taken from the pockets of the individual citizens of that state. If a municipal plant does not pay taxes then the tax money needed is taken from the taxpayers by some other form of tax.

"Then," the taxpayers of the state of Washington are saying to the politicians, "why should not the municipally owned plants pay taxes?"

Politicians must in self-defense oppose that proposition where there are city-owned plants. Such plants always find jobs for the politically deserving. If they paid taxes as identical privately owned plants do they could not compete in rates with their privately owned rivals. Therefore, the taxpayers would tire of them quickly. If any municipally owned plant can produce current today as cheaply as its privately owned rival, assuming the same taxes and the same bookkeeping, I do not know of it, have never heard of it, and will be delighted to tell about it when I find one.

IF municipally owned plants proved to be unable to furnish current in competition with privately owned plants, once they are saddled with the tax burden which they now avoid in great part, the taxpayer would soon begin to resist this additional charge

on his shrunken budget. Hence it is evident that the politicians in the state of Washington, and in the other political subdivisions where the taxpayers are beginning to understand the tax problem, must oppose the taxing of municipal plants. It is equally apparent that the taxpayers will increasingly insist upon such taxation.

For the extent of the revolt of the taxpayers against the politicians, as distinguished from a revolt against the state, must now be recognized.

This revolt began three years ago in the city of Chicago.

That city's insane extravagance has been a national scandal. Part of it was due, of course, to the drunken splurge of spending in which all America indulged while times were good. The physical Chicago was superb, with its concrete roads wagon-spoking into the prairie and its embossed lake front and its manicured parks. Part of it was due to graft and the demands of the political organizations. Something was due to the incredibly complicated and duplicated set-up, which furnished a perfect shelter for the political manipulators.

There are in Chicago's city limits 419 tax-levying and tax-spending bodies and 8 major governments—and not one responsible head. Not even one informed head, according to a recent statement of Fred W. Sargent, president of the Chicago and Northwestern Railroad and general chairman of the Committee of One Hundred which has established an actual dictatorship over the city.

(Here I must tell a story about Sargent, just to show what sort of a man he is. On one occasion he was called into conference with the elder J. P. Morgan and several of the foremost railroad presidents. Morgan handed him a typewritten document:

"I have prepared this statement," said he. "Sign here."

Sargent began to read it.

"Sign, sign," said one of the elder railroaders. "Don't keep Mr. Morgan waiting. This looks as though you do not trust us."

"As gentlemen, I trust implicitly every one of you," said Sargent. "As railroad men I do not trust a damned one of you a damned inch.")

Unpaid payrolls amount to $31,000,000 and unpaid bills to $20,000,000 and contractual obligations to $10,000,000. There are in the hands of the public $114,000,000 in unpaid tax anticipation warrants and another $94,000,000 of this paper in various sinking funds and a total of $16,000,000 of matured bonds and interest in default. Three years ago the situation had become impossible, but not one politician had so much as twiddled a finger to help. Not one job could be dispensed with. Not one luxury could be canceled. Not one salary could be lessened.

In sheer desperation the taxpayers refused to pay taxes on dishonestly assessed real estate.

WHEN taxes are not paid and tax anticipation warrants can no longer be sold to the banks and the looting politicians cannot get any more money anywhere state business comes to a standstill. Chicago's taxpayers admittedly accepted the counsels of desperation. In a lawless city they tried to remain law-abiding. They did not organize to oppose the raiders until

confronted by the possibility that the policemen and firemen would cease work, and rioting and outlawry be accepted as commonplaces. When they did organize it was to some purpose. The Committee of One Hundred on Public Expenditures has already compelled a sharp reduction in the cost of running the city. A reorganization of its rambling and unwieldy awkwardness is in prospect. The politically elected officials are coöperating fairly well. They have little choice in the matter.

THIS is a form of dictatorship, of course—the dictatorship of the taxpayer as against the dictatorship of the tax-eater. It is Sargent's opinion that "sooner or later, through some such informal device as we have set up, other cities will be forced to seek relief from the consequences of uncontrolled spending by local patronage machines." New York is heading that way. The politicians could not believe, even when written evidence was found on the ballots. Mayor Jimmy Walker had to bounce out of office as a result of the revelations of the Seabury investigation and Acting Mayor McKee did his best to cut the city's operating costs. He was bully-ragged and opposed at every turn by the organization. He did not become a candidate for election. In spite of the difficulty of doing so, over two hundred thousand citizens wrote his name on the ballots in the machine. The phenomenon had never before been witnessed in Manhattan.

Even that was not definite enough for the politicians, so the bankers took a hand. With the example of Chicago before them they did not propose to load their vaults with unsalable and possibly valueless tax anticipation warrants. They had permitted the city to be robbed, but when they were asked to rob themselves they grew virtuous. They told newly elected Mayor O'Brien to cut the city's costs.

"Otherwise you get no money."

The preliminary cut is only $20,000,000, but this is not the end. New York is so deeply in the hole that it must borrow to meet its day-to-day expenses, and it cannot borrow unless the bankers are sure that lending will be safe. Back of the bankers are the taxpayers, as shown by the unsolicited vote for McKee. The liaison of Tammany and the Republican organization has been notorious for years. Where one cuts the other covers. Ride and tie. It is gossip in both organizations that a nonpartisan ticket is impending. Alfred E. Smith, four

¶ "THE *attractive feature in every proposition that a city build its own electric light plant was that the cost could be paid for out of a bond issue. That seemed to be buying something on the cuff and then sending the cuff to the laundry. Lately it has been discovered that bonds must be paid for and the interest must be kept up and that the only place where the money for these necessities can be found is in the pocket of the taxpayer.*"

terms governor of New York, once candidate for election as President of the United States, has demanded that the five city governments be cut to one government, and that useless officials be dispensed with and grafts and carelessness and juicy contracts be cleaned up.

THESE are only a few of the high lights of the revolt of the taxpayers against the politicians. It might be pointed out that the voluntary and resistless dictatorships of honest citizens in state and municipal organizations are a development that might easily spread. If the power to levy taxes and spend money is taken out of the hands of the professional office-holding class because they are not to be trusted, it is only a step to take other powers from them. Experience shows that an extra legal action which works soon acquires legality. If Mussolini had not made good he could not have held on. He was a usurper and is a tyrant, no doubt, but he became Il Duce and The Boss because he spoke for decency and self-respect and good government against a loose autocracy of idlers and thieves.

IT is true that the American form of government is generally considered rigid and unyielding and not properly responsive to the will of the people. A change may be made in the Federal Constitution only after pangs and long delay.

But it is often forgotten that the voters have in their hands power to make sweeping changes at home—if they will only bestir themselves to use it.

Nearly all the measures voted upon last November had to do with questions of economy and taxation. In the four states in which the proposal was made amendments were adopted limiting voting power on certain expenditures to property holders or to taxpayers.

Three states adopted tax-limiting measures and a similar measure was put through the Indiana legislature after a long struggle.

Rhode Island's voters defeated a bond issuing proposition for the first time in the state's history.

For the second time Oklahoma voted against an increase in the income tax, and in five states out of seven a proposition to adopt an income tax failed, on the broad ground that the extra money would merely be thrown away.

In North Carolina a twelve-million dollar cut was made in the state's expenditures, by the use of common sense and determination. Action of this sort has become a necessity in our farming states, for the sales of farms for taxes more than doubled in 1932. An instance of the attitude taken by taxholders in Kentucky is the fact that Governor Ruby Laffoon framed an amendment to the state Constitution, which was adopted by the legislature and will be voted on at the polls in 1933, which will relieve real estate and the standing stocks of merchants of all taxes for state purposes. He believes it will be adopted. But this is only a beginning.

IN the days when the whole nation was on a toot there was nothing easier than to float a bond issue. One reason why so many little banks failed

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NOT AS NATURE INTENDED

in the past three years is that their big brothers in the cities loaded them up with bonds. Some of them were good and some were bad but they had all been issued. The attractive feature in every proposition that a city build its own electric light plant was that the cost could be paid for out of a bond issue. That seemed to be buying something on the cuff and then sending the cuff to the laundry. Lately it has been discovered that bonds must be paid for and the interest must be kept up and that the only place where the money for these necessities can be found is in the pocket of the taxpayer.

Promoters of municipally owned plants at this moment, for example, might be asked to explain away the statements made in a letter from H. B. Creel of Tacoma, printed in the *Congressional Record* of January 19, 1933. He stated that Tacoma and Seattle have been held up as shining

examples of the municipal ownership of utilities. "Yet they have the highest tax rates in cities of their class." In Seattle "City Light claims a plant worth $50,000,000, $20,000,000 reinvested in plant, an earned surplus of $12,000,000 and annual savings of $10,000,000 to customers. But City Light can pay no share of the taxes and now must have aid from the Reconstruction Finance Corporation. . . ."

FOR some years a proposition has been drifting on the currents of our political life that an ocean highway be made of the Great Lakes and the St. Lawrence, and that New York state be empowered to shoot as many million dollars as necessary in setting up a hydraulic power plant on the river to make use of the impounded water. No one thought very much of the money involved. The engineers' estimates of the initial cost ran to something more than half a billion dollars, and it was admitted that this sum was unlikely to be the final cost. It might run to a billion dollars, maybe more. Whatever attention was given to it was that shaped by the do-gooders, professional and amateur, who insisted that this seaway-power project would bring animal crackers and tin rattles to millions yet unborn. If we had continued to be prosperous and slightly dizzy it is possible that the St. Lawrence project would be put through. Nowadays I notice that public attention is being directed not so much to the thought that by spending this money we could make someone happy as to the fact that we have not got it to spend. Bonds for such purposes would hardly interest the country banker today, in view of the fact that his safe is still packed with bonds in which he got interested in 1928. One of the paragraphs of the resolutions in opposition adopted by the Syracuse Chamber of Commerce states that:

> "This would be an unjust and wasteful use of the public funds of the United States, particularly inexcusable in the present period of financial stress."

The resolution would be more nearly correct if it had recognized that there are no public funds of the United States just now. They have all been spent. The only way in which money could be raised for the St. Lawrence proposition, or for any other proposition involving public ownership of any utility whatever, is through the issuance of bonds. It has been pointed out that the taxpayer has somewhat belatedly discovered that it is he who pays for the bonds and he does not like it. Even the Lower House of Congress (and it is especially requested that there be no noise in the pews when this name is spoken) is discovering that the taxpayers believe that what is needed is not more taxes but less spending.

EXPERTS appointed by a congressional committee to bone up on facts rarely step outside that particular province because it is not safe. But the group of experts headed by L. H. Parker, chief of staff of the Joint Congressional Committee on Internal Revenue Taxation recently reported among other things that since 1922 the Federal tax burden has increased $9.26 per capita and the per capita tax burden of all other taxes has increased $18.91, and that our

present system of taxation is cumbersome, and in many respects inequitable.

"The tax burden on certain specific objects is reaching the breaking point, and expenditures have increased to such a degree" that it is doubtful "whether the public is obtaining value for the tax dollar."

Mr. Parker is conservative, as becomes a servant of the public. The public knows that it is not getting value for the tax dollar. And it is saying so in tones that ring like a wagon tire hit by a horse shoe. As this is being written the newspapers tell the story of the visit of Senator George W. Norris of Nebraska to Muscle Shoals, accompanying President-elect Roosevelt, and the latter's assurances to the residents of the vicinity that the government will put the tremendous plant to work again. The arguments on the advisability of spending an unknown number of millions of dollars on this operation will not here be repeated. Only this question will be asked.

"Where is the money to be found?"

CONGRESS can appropriate the money needed for it, of course. As there is no money available in the Federal treasury, that money must be secured either by the sale of bonds or by short-term borrowing. Unless the revolt of the taxpayers against the extravagance of Congress be made more tangible in the next few months, it is entirely possible that the money will be secured in one of these ways and the taxpayers who must ultimately settle the bill will be helpless. But I should like to ask a question at this point:

"If that money were to be raised in the manner in which privately owned corporations must raise funds—that is, by submitting a statement of potential market and probable earnings to the public—would the public buy the bonds offered on such an undertaking?"

My guess is that the public would not. It has had a liberal education, if not a free education, in bond values recently. It demands security behind a bond nowadays and in all such propositions as that of Muscle Shoals the only security that can be given is the solvency of the taxpayers. If the continued orgy of tax-spending continue that solvency will be of the same approximate value as a 1914 bird's nest.

When taxpayers get angry enough they can protect themselves. Look at what happened to George B. Cox.

How One State Regulates Holding Companies by Regulating Operating Companies

A new venture in state commission control of the financial practices of parent corporations by safeguarding the resources of the local utilities in the interests of the ratepayer and of the security owners, as expressed in the Harrison Bill. By HUGH WHITE, *Chairman of the Public Service Commission of Alabama. In the next issue of* PUBLIC UTILITIES FORTNIGHTLY—*out March 30th.*

WHAT THE TEST OF EXPERIENCE REVEALS ABOUT

Our "Depression-proof" Utilities

Some of the reasons why the security issues of public service corporations have slumped disproportionately to the decline in utility output—and some lessons that have been learned.

By ARCHER E. KNOWLTON

GLIB comment is frequently heard to the effect that the electric utilities are "depression-proof."

Relatively, there is some truth in the assertion but absolutely, there is none. Some of the utility folks themselves would say "absolutely none." They apprehend the chilling facts, having seen gross revenues drift nearer and nearer to operating and fixed charges, having found operating expense resistant to much reduction, while in the meantime taxes go up and up and fixed charges absorb a progressively greater share of the total intake.

No, the utilities are fully aware of that fifth horseman who dashed so unexpectedly out of our twentieth century Apocalypse. Some would call that rider Technocracy; others more intelligibly, Famine-amid-plenty. But whatever his name he is certainly hard to unhorse.

The utilities are more scared of him than many of the others in his path are. His insidious weapon is the tuberculous germ of funded commitments. The exhausting inroads of debt burdens, contracted when dollars were easy to get and now to be paid when dollars are keeping themselves dear, sap the vitality and vim of the utility corporations. More so than any other business because regulation to fixed overall return has encouraged far heavier mortgage borrowing than in almost any other enterprise except the railroads.

THE first two indices logically to be considered in attempting to find how much the utilities have been affected by the dip in business activity are the kilowatt-hour output and the gross revenue. These two behaved somewhat differently and the reason for the difference will be offered. The twelve months' running

total of kilowatt hours rose steadily for five months after the crash of November, 1929, reaching the high of 90,922,456,000 in April, 1930. The gross revenue did not reach its peak, however, until six months later, October, 1930, when the preceding twelve months totaled $1,994,939,000. Since then output and revenue have declined steadily the latest data showing a revenue for the years ending October 31, 1931 and 1932, at the values of $1,984,716,000 and $1,858,592,000. The present decline from the 1930 high is 6.83 per cent. The energy generated has fallen approximately 17 per cent in the same time.

The industrial and commercial consumption slumped noticeably as soon as production conformed to the trend of sales at retail. It was only the sustained upward trend of household use that offset so successfully the decline in receipts from business usage of current. The higher rate for the homes, gave a relatively few kilowatt hours of increase there, a chance to neutralize to a considerable degree many more kilowatt hours no longer sold at the lower rates to industry and commerce. That phenomenon, incidentally, is what affords the affirmative side of this debate its best, if not sole, argument.

It certainly is a hopeful augury for the future that the populace with a leaner purse is nevertheless economizing more stringently on other things than on its outlay for electrical comforts. Maybe the industry will ultimately sense the significance of that. If it does it will find ways of applying the capital that will again be at its disposal in such a way as to aid the home consumers to obtain on rental or easy purchase the heavy duty appliances like ranges and water heaters which represent the next lump of increased convenience in the home.

Something of this sort will have to be done even if more states foolishly legislate the utilities out of the merchandising business. If all that happens to assure sustained growth in household usage all that may here be cited as depression dents may prove in retrospect to have been merely mild compression of a truly resilient body. But that is in the future. We are arguing the here and now.

TWENTY-EIGHT large utilities, operating both in metropolitan and diffuse areas, which took in a gross of $741,622,000 in the year ending some time during the third quarter of 1932 had taken in $786,145,000 during the preceding year. That is a one-year shrinkage of 5.67 per cent in gross operations for something more than one third of the industry. In net earnings, after operating expenses and taxes, they found they had $306,664,000 left in 1932 against $325,101,000 for the preceding year. That too is a shrinkage of 5.67 per cent. Finally, after paying interest on funded debt and debentures and dividends on preferred, their net earnings available for common stock dividends and increments to surplus decreased from $172,460,000 in 1931 to $143,582,000 in 1932. That turns out to be a drop of 16.75 per cent.

In some industrial circles, where deficits are pretty much the rule now, such a record would be dubbed downright affluence. Any business which avoids a deficit in times like these is rated highly successful, and one that

can actually pay dividends is either a Midas or a miser on expenditures. Relatively speaking they are correct, but again speaking absolutely, no.

Notice what has happened to the difference between gross earnings and net earnings—namely operating expense, maintenance, depreciation, and taxes. (Don't forget taxes.) This item decreased from $461,044,000 to $434,958,000, a decrease again of 5.67 per cent, the same as for gross and net. Now the accomplishment of many times that percentage economy is no great effort for industrial and commercial enterprises which can curtail all their activities on a proportional scale, including the cutting of wages, salaries, and work hours.

SEVERAL of our major industries are down to such levels of indexed activity as 17 per cent or 24 per cent or 31 per cent. That first, a decline of 83 per cent, looks calamitous if not disastrous but it is really not of equal severity with a decline *to* 83 per cent in utility volume. The latter is a fair value to assign to the overall slump in output experienced by the electric light and power industry as a result of three years of depression.

An 83 per cent slump in an industry that has accumulated a large undivided surplus during a lush era can conceivably be borne with equanimity or even complaisance. Admittedly the employees who have lost their jobs, the officials who have lost their bonuses, and the stockholders who have lost their dividends will feel they are the victims of a ghastly depression and rightly so, at least in the case of employees and stockholders. But taking a cold statistical attitude, an industry so affected may not be near insolvency or ruin if it has a sizable surplus, plant values written down out of previous sweet profits, and hardly any bonded indebtedness.

The utilities, however, have on the average far smaller surpluses, have under rate regulation no corresponding chance to write down book values out of excess profits and, more important, have been encouraged to assume a high proportion of bonded debt. A 17 per cent slump under such circumstances may actually bring them closer to insolvency than the converse slump of 83 per cent might do to an industry designed to take such punishment. Several utilities which have had surpluses have had to draw on them to maintain dividends on preferred or common. That, however, is nothing to weep about because that presumably is the one good reason for having accumulated a surplus. De-

¶ "THE *exhausting inroads of debt burdens, contracted when dollars were easy to get and now to be paid when dollars are keeping themselves scarce, sap the vitality and vim of the utility corporations. More so than any other business because regulation to fixed overall return has encouraged far heavier mortgage borrowing than in almost any other enterprise except the railroads.*"

troit Edison Company saw its surplus shrink $2,000,000 in 1931; even after reducing its dividend rate from 8 per cent to 6 per cent its 1932 surplus is likely to show a further contraction of $2,250,000, it was stated in the brief filed with the Michigan commission in rejoinder to the city's plea for a sharp rate reduction. Its electric gross has dropped away $4,700,000 from $46,844,572 and its net shrank by practically that same amount, from $11,376,152 to $6,933,805.

THE utility is a 24-hour business, seven days a week, 365¼ days a year, no holidays, not even Sundays. No chance for a 3-day week or a 5-hour schedule. Operating staffs are reducible only as whole units or whole stations can be shut down and load concentrated on a lesser number of operating units. Not much of that has been possible with only a 17 per cent drop in output.

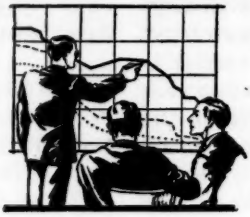
Customers have not decreased appreciably in numbers and it takes practically as much clerical work and meter reading as ever to maintain the records and perform the billing functions, regardless of the change in kilowatt hours per customer. But construction forces have been reduced as need for new plant facilities declined. It is also safe to say that maintenance has been pruned; repairs and overhaul have been placed on a slower schedule. While the effect of that kind of economy is not for some time noticeable in the quality of service rendered, it will not be long before it will be reflected in suddenly increased outlay to restore the systems to their pristine efficiency. Incidentally equipment and supplies manufacturers are sitting around fervently hoping that time will come soon enough to save them from ruin.

A POTENT reason why the difference between gross and net has not been decreased more because of the above favorable factors lies in the unfavorable behavior of taxes. These have become a stalking menace due to the ease with which states, cities, towns, and counties can lay their heavy hands on the fully exposed properties and fully exposed fiscal operations of the utility companies. It is too alluring a prize to pass by when governmental deficits creep up in the effort to perpetuate paternalism, profligacy, and payroll padding. Detroit Edison has reported paying $2,902,159.16 to the city as against $2,027,346.15 two years ago; that is a 43 per cent boost.

In 1932 electric utilities will have paid well over $200,000,000 in taxes, more than 10 cents out of every dollar of gross or a third of that part of net otherwise available for dividends on common. Income tax was increased. While the customer ostensibly pays the 1932 three per cent tax on energy, it costs the company nearly as much to collect the fees for Uncle Sam as if it had to pay him out of its own pocket.

The increase in taxes did its share to keep the utilities from reducing operating expenses and even in some cases the rates themselves to a greater extent than they did.

Economic distress of all kinds of public utility customers has increased the number of uncollectible bills three and four-fold. That too has its effect downward on gross revenues



Why a Small Slump Jeopardizes the Utilities More than Other Types of Corporations

"THE utilities have on the average far smaller surpluses, have under rate regulation no corresponding chance to write down book values out of excess profits and, more important, they have been encouraged to assume a high proportion of bonded debt. A 17 per cent slump under such circumstances may actually bring them closer to insolvency than the converse slump of 83 per cent might do to an industry designed to take such punishment."

and upward on operating expense.

JUST to see how all these various factors combined to create a precarious situation for a particular utility, consider one which was taking in consolidated gross at the rate of $13,400,000 early in 1931. This had slumped to $11,800,000 by the end of the third quarter of 1932. Meanwhile operating expenses had been curtailed from $6,530,000 to $6,050,000 but interest and other deductions (including those ominous taxes again) had grown from $2,920,000 to $3,300,000. Retirement accruals were dropped from $750,000 to $590,000. Preferred dividends rose slightly from $1,450,000 to $1,660,000.

Plotting all these items one above the other, the total forms the lower boundary of the area for common dividends. The upper boundary is the gross revenue line. The lower line is sensibly flat ($11,650,000 and $11,600,000 at the ends) but the upper line turns down so persistently that the common dividend area looks very much like a cornucopia with the abundant end pointing back into history and the sad end tending to become too small to even blow through before the end of 1932 happens along. That company is not depression-proof, if you can sense the shivering of the preferred stockholders. That same preferred was at a premium a short three years ago. Since then it has lost practically its par value on the exchange and there was a reason.

THERE are other palpable but less measurable factors which can be cited to belittle the notion that utilities are in no sense oblivious to this old depression of ours. Some of these

are merely trends or sporadic manifestations; nevertheless they are disturbing and can be called part of the depression because some of them never would have come to the surface if it had not.

There is, for example, a growing urge to give value of service a greater weight in fixing rates in contrast with the cost-of-service guide of the past. Along with it goes a tendency to accord as little weight to the reproduction cost as the Supreme Court will condone. That, however, is more an academic question than a practical one because original cost, trended to reflect price levels for successive investment increments, falls close to reproduction value. This point was substantiated very well by the recent Potomac Edison decision in Maryland.

Then there are the more direct threats of an unreasoning public tempted to cut slashes right and left in its economic rage. Rate agitations, even though technically unsuccessful to the degree anticipated by the public, are harmful to the utilities, even if they make rate concessions in an effort to preserve good will. Extra costs are incurred in the proceedings. If the public fails to get its whole wish it goes to competitive services if it can. Industrials are doing that right now under the stimulus of the payment-out-of-savings plans for purchase of private generating facilities advanced by engine manufacturers.

THE household customers have no such alternative so some of them are finding ways of rendering the meters blind to what they should see and record. Agitations are also started to insist upon a change in the form of the rate if not in its magnitude; the service charge and the area charge are combated. The depression is thus threatening to rob the utilities of all the progress they have made in laying a sound foundation for a truly promotional rate structure. A truly promotional rate provides the flat charge feature to cover carrying charges on ready-to-serve investment so that energy can be set at a relatively low unit charge in order to stimulate the large scale usage which the public really envisions for its future comfort. If this worthy program of promotional set-up is ruined by a short-sighted public that circumstance may well turn out to be among the worst blows struck at the electric utilities by our fifth horseman.

BUT not all the influence of the depression on the utilities has been harmful or even repressive. Several salutary factors have been at work. A trend toward decentralization of management has resulted from shrinkage of contributions to the holding company coffers. Supervisory staffs have been reduced there and a consequence is more autonomy for local managements. If this leads to a higher degree of responsiveness to local public sentiment of the informed grade it certainly will have to be rated as a beneficent result.

The necessity for economy has led to the curbing of those profligate little habits which everyone acquired when money was so easy that keeping up with the Joneses became the national sport. Exclusion of such facile expenditures will hold over a while into the period when revenue resumes its

rise. If it does this is likely to be a most effective factor in offsetting increased taxes enough to make a new era of voluntary rate reductions the order of the day.

EMPLOYEE morale has been shaken by the economy wave to some extent but far more by imitating the glumness of executives who have been scared out of years of growth by fear of drastic regulation, fear of government ownership, fear of municipal competition, fear of private plant competition, fear of more taxation, fear of political chicanery in provoking rate reduction pleas, fear of universal exclusion from appliance merchandising.

That array sounds like enough to make anyone glum. Actually the morale among the utility employees has recovered more than it has among the harassed executives. Carried with it is a more enlightened grasp of the differentiating aspects of the utility enterprise. That's a worth-while gain for the utility business, because one of its weaknesses has always been that hardly a routine employee in the business knew much of its intricacies—certainly not more than a whit by comparison with what the reformers think they know about them.

ANOTHER consequence that can be counted a gain is the newer realization that regulation is not insurance against economic ills. Surpluses will be built up in the future to meet any sharp decline in earnings that may occur. The pause from the hectic days of '29 has also brought to the forefront the idea that technical obsolescence has exacted its toll and that depreciation rates may have to be increased materially if the same rate of inventive genius is sustained.

Funding will undoubtedly be for shorter terms until recollection of this current depression shall have passed from bankers' memories. In competitive industry it will be a case of get in and get out quick with loans. The shortened time for competitive industry will probably tend to make long terms less the rule in electric utilities. Sinking-fund accretions will have to speed up along with contributions to retirement reserves until it is more manifest than now that technical advance has arrived on a plateau.

Now some of these are mixed blessings. In so far as they call for greater drafts out of gross earnings they can be bewailed. But they all lay a foundation for a sounder structure, more liquid and more responsive to undulations of business activity and price levels.

BUT why go on? The utilities are not depression-proof? They have had more in general to worry them than have businesses much more flexibly adjustable to even more extreme ranges of activity than have so far been experienced by the utilities. If they are numbed by it all they can be excused—for a while. But if they survive those threats with no zeal left to resume their strident advance then that will be by all odds the most vicious damage done to the utilities during our maladjustment period.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

PAUL HUDSON
Newspaper columnist.

"The Tennessee valley is virtually unanimous in favor of the expenditure of a few hundred millions in the Tennessee valley."

JOHN E. ZIMMERMAN
President, The United Gas Improvement Company.

"The best way to correct holding company abuses is to strengthen the jurisdiction of state commissions over operating companies."

ED HOWE
Newspaper man of Kansas.

"When there is a disturbed condition in public affairs, why should not the conservatives begin the clubbing, if final resort to clubs seems a necessity?"

MARVIN JONES
U. S. Congressman from Texas.

"The essential functions of the Federal Trade Commission can be more expeditiously handled by House and Senate committees and by the Department of Justice."

B. E. HUTCHINSON
Vice president, Chrysler Corporation.

"The conclusion is inescapable that government regulation, as we know it today, and as we are asked to consider it in terms of the automobile, is largely unwarranted and mostly harmful in its effects."

ROBERT R. MCCORMICK
Newspaper publisher.

"Congressmen who thought they were smart to confiscate the wealth of the nation to pay for their political dissipations were less wise than the Vandals who sacked Rome. . . . Rome was not the home of the Vandals."

H. I. PHILLIPS
Newspaper columnist.

"A survey of energy in North America is now being taken by the technocrats. It will show that 90 per cent of the energy in this country today is being expended on golf links, bonus armies, and the preparation of letters to newspapers."

MILO R. MALTBIE
Chairman, New York Public Service Commission.

"While public utilities have been vociferous in their demand in a period of advancing prices that reproduction cost shall be the sole basis for computing a fair return in rate making, in this period of declining prices they may be just as vociferous in demanding that they be allowed actual cost as the determining factor."

A PROPOSED NEW STEP TOWARD STATE SOCIALISM:

The Regulation of Reuben

Is the pending Jones Bill the prelude of an effort to declare the farm a public utility—and to place it under commission control?

By HENRY C. SPURR

Is a farm a public utility enterprise? Is it "affected with a public interest" in the technical sense?

Is the land together with the buildings, machinery, and equipment just a private farm as we have always supposed it to be, or is it in reality a public utility plant on a small scale? We know that water, telegraph, telephone, gas, and electric companies are public utilities because these businesses are said to be affected with a public interest. Is farming affected with the same sort of public interest?

It is a wise man who knows what a public utility is in advance of a decision of the Supreme Court on the subject. The Supreme Court is the tribunal which under our laws has the final say as to whether a business is public or private.

There would be no great point in knowing what a public utility is or whether farming is a public utility were it not for the question of regulation. All kinds of business in this country are subject to some control by the government, but not to the extent that public utilities are.

A builder, a manufacturer, or a merchant does not have to ask the government whether or not he can go into business. Nor does the government have any power to tell him what prices he may charge or to whom he may, must, or must not sell. If he wants to abandon the whole or any part of his business, he does not have to apply to the government for leave.

It is different with public utilities. Freedom in the choice of business, in the fixing of prices, and selection of customers is the general rule safeguarded by the Constitution. Lack of freedom is the exception which applies for various reasons to public utilities. Because the Federal and state governments are constantly endeavoring to extend their powers over business, especially in the matters of rates and service, it is often necessary to know whether the business which

the government wants to regulate is public or private.

That is why it may be important at this time to consider whether agriculture is a public utility. If it is, the government has the power to fix the price of agricultural products and limit production. The Jones farm relief bill, which was passed by the House of Representatives, declares:

> "That the depression in prices for that portion of our agricultural commodities for domestic consumption, and the effect of unsettled world conditions upon foreign markets for that portion of our agricultural commodities for consumption abroad, and the inequalities between the prices for agricultural and other commodities, have given rise in the basic industry of agriculture to conditions that have *affected transactions in agricultural commodities with a national public interest*, that have burdened and obstructed the normal currents of commerce in such commodities, and that render imperative the enactment of this act for aiding in the relief of the present national economic emergency in agriculture and thereby facilitating the recovery of industry, transportation, employment, and finance."

It is possible that the expression "affected with a national public interest" may have been used in the Jones Bill in the popular rather than in the technical sense. But the words have a suspicious look. It is the expression usually employed when a legislature tries to exercise supreme power of regulation over a business. To justify regulation, the business is declared to be affected with a public interest. If the real aim of the Jones Bill were to fix prices and control production directly, this could not be done unless the business were affected with a public interest. Legislation may have viewed the bill as a price-fixing and production control measure. So the intention may have been to use the words in the technical sense, in order to make the law stick if possible, as a price-fixing and production control measure.

Agriculture in normal times has never been regarded as a public calling or as a public utility; but the Jones Bill declares in substance that the depression has caused it to be affected with a national public interest. That would seem to be the widest public interest any business could be affected with.

There is a constant urge upon legislatures to declare this, that, or the other kind of business affected with a public interest in order to pave the way for price fixing by the government. This is because the "public interest test," indefinite as it is, is the only one we have for determining whether a business can be brought under the full governmental control. Back in 1877 the Supreme Court said:

> "When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created."[1]

A short way of expressing it is that the business must be affected with a public interest.

The Jones Bill asserts that agriculture is affected with a national public interest. So long as it is so affected, agriculture can be made to submit to full governmental regulation. It is true that the farmers who advocate this legislation are not now being asked to submit to regulation. They are asking for it themselves because they want the government to raise

[1] Munn *v.* Illinois (1877) 94 U. S. 113, 24 L. ed. 77.

prices. That, however, makes no difference in the principle.

But a legislative declaration as to the nature of a business does not settle the question. It is the well-established law that a private business cannot be converted into a public business so as to be subject to full regulation by the mere enactment of a statute declaring the business to be affected with a public interest.

IF the question of what constitutes a public utility business were left solely to the discretion of legislatures, the constitutional guaranty of freedom to engage in business and to charge what one pleases for one's goods or services would be of little value. If, for example, a legislature wanted to regulate the price of shoe strings or to limit the manufacture of shoe strings, all it would have to do would be to declare the shoe-string business affected with a public interest and then proceed to regulate it. So the courts, not legislatures, decide whether or not a business is affected with a public interest in order to preserve the constitutional safeguard against governmental aggression.

The important question always is not whether the business has been declared by a legislature to be affected with a public interest, but whether the business is in fact affected with such an interest. Is agriculture really affected with a public interest, in the technical or legal sense?

THE public is interested to a certain extent in all kinds of business. Saying that a business, to be affected with a public interest in the technical sense, must be dedicated to the public, does not help very much. The owners of a large variety of business enterprises are anxious to sell to anyone who will buy and pay. There is not much difference between a telephone business and a newspaper business in respect to the public interest in the enterprise or the desire for the patronage of the public. Yet a telephone business is without question affected with a public interest while a newspaper business is not.

The mere fact that a business has to have a franchise to use the streets or the fact that it operates under monopolistic conditions is not a controlling test. If either were, there would be no ground even for a pretense that agriculture is affected with a public interest.

That the public has a very substantial interest in a business, that its operations are extensive and its customers many, or that the public may have a feeling of concern in respect to the maintenance of the enterprise, is also not controlling.

Take for instance the sale of gasoline. In 1927 Tennessee tried to fix

¶ "IT *is possible that the expression 'affected with a national public interest' may have been used in the Jones Bill in the popular rather than in the technical sense. But the words have a suspicious look. It is the expression usually employed when a legislature tries to exercise supreme power of regulation over a business.*"

the price of that commodity. It was urged that gasoline is of widespread use; that enormous quantities of it are sold and that it has become indispensable in carrying on commercial and other activities. But the Supreme Court held that this did not cause the business to be affected with a public interest so as to subject it to price control.[2] Gasoline was held to be one of the ordinary commodities of trade differing, so far as the question of public interest is concerned, in no essential respect from a great variety of other articles commonly bought and sold by merchants and private dealers in the country.

COMPARE the newspaper and telephone business from the standpoint of public interest. Nine out of ten persons would prefer to be deprived of telephone service rather than newspaper service. In one case it was in fact urged that the publication of newspapers of general circulation is so affected with a public interest that the owners of the newspapers are compelled, irrespective of statutes, to sell advertising on equal terms and without discrimination. If newspaper publication is in fact affected with a public interest, the government could put newspapers under commission control and fix their prices. But the business was held not to be public.[3]

The manufacture, sale, and distribution of ice is a very important business in Oklahoma. The public is much interested in it. The legislature declared it to be a public business and proceeded to regulate it on that theory. The Supreme Court, however, held the law unconstitutional. But the court said:

> "Here we are dealing with an ordinary business, not with a paramount industry, upon which the prosperity of the entire state in large measure depends."[4]

Is this a clue to what constitutes a business affected with a public interest? If so, farming might easily be said to be a paramount industry, and, therefore, a public utility.

It has been held by the Supreme Court, however, that a legislative declaration that the business of manufacture or preparation of food, clothing, or fuel is not affected with a public interest.[5] But there may be a difference so far as the public interest question is concerned between the growing of food and its preparation for sale.

Again circumstances alter cases. The public utility status is not static. The West Virginia Supreme Court of Appeals put it this way:

> "And it cannot be doubted that in the future, as the relations of our ever-increasing population grow more intimate and interdependent, many businesses and enterprises which are at this day considered as entirely of private concern and beyond the power of the public to regulate will become subject to control under the police power. The fact that the conduct of any particular enterprise may have in the remote or even recent past been considered as entirely the subject of private contract, while persuasive of the private character of the business, is not at all conclusive."[6]

THE Jones Bill declares that the depression has affected agriculture with a national public interest.

[2] Williams *v.* Standard Oil Co. 278 U. S. 235, P.U.R.1929A, 450.

[3] *Re* Wohl, 50 F. (2d) 254, P.U.R.1931D, 361.

[4] New State Ice Co. *v.* Liebmann, 285 U. S. 262, P.U.R.1932B, 433.

[5] Wolff Packing Co. *v.* Court of Industrial Relations, 262 U. S. 522, P.U.R.1923D, 746.

[6] Clarksburg Light & Heat Co. *v.* Public Service Commission, 84 W. Va. 638, P.U.R. 1920A, 639.

While changed conditions may make it possible to convert what was formerly a private business into a public business, changed conditions alone will not do it. The Supreme Court has said that a business to be affected with a public interest must be dedicated to the public. This manifestly requires an overt act of dedication on the part of the owner. A depression would not be a voluntary act of the owner of any business. Agriculture, therefore, if in normal times a private business, cannot become a public business by reason of a depression, no matter how severe, because it lacks the owner's voluntary dedication of the business to the public.

If agriculture, however, has all the other elements of public utility service save dedication to the public, would acceptance of the provisions of the Jones Bill in order to enjoy its benefits amount to a public dedication? A nice question upon which there appears to be no legal authority.

Assuming the correct answer to the question to be in the affirmative, not all farmers would be likely to want to dedicate their business to the public. There are disadvantages as well as advantages connected with the public utility status. For example, prices can be lowered as well as raised by the government. In times of shortage of farm production when prices are high, the voice of the consumers would be sure to be heard if the government had the power to fix prices. They would be certain to demand reductions.

If the status of a public utility were given to agriculture, the farmers might not be as popular among the politicians as they now are. It must be remembered that there are three times as many consumers as producers.

THEN there is the question of government ownership and operation. When a business obtains the status of a public utility by becoming affected with a public interest, the advocates of government ownership say that the conduct of the business is a function of the government. Therefore, agriculture would be regarded as a function of the government, which might be urged as an inducement for the government to take over the business or at least to set up competing farms in order to keep the prices of agricultural products as low as possible. These would probably be known as "yardstick" farms.

MANY other controversial questions would arise, but perhaps this is looking too far ahead. The important questions at present are these:

Is agriculture by nature a public utility?

If not, does the depression make it so?

It would seem that unless agriculture is in fact affected with a public interest for either of these reasons, the government would have no power to fix prices, or regulate production even in the manner proposed in the Jones Bill.

And the probability is that agriculture will not be held to be a public utility.

But that is only a guess.

A NEW AND HAZARDOUS VENTURE IN

Pipe-line Regulation

A bold expedition into the third dimension of regulation by the state of Texas, the result of which will be watched with interest by the public service commissions—and by the state legislatures.

By K. LEE HYDER

Professor Piccard must look to his laurels. His exploration in the stratosphere—space never before entered by man—has been hailed as a definite advance in scientific attainment as well as a thrilling adventure. He has added a new event to our Scientific Olympics and must anticipate the competition that is sure to follow. Perhaps his success may in a measure explain, if not justify, flights in other lines of endeavor that may be just as far-reaching, if not as spectacular.

Look at the field of public utility regulation and consider the rapid expansion of the past few years. We raised our national eyebrows when our state legislatures entered the "twilight zone" and began endowing our public service commissions with authority over industries not previously considered as vested with public interest. For a time the scope was still within reasonable economic boundaries; now, paralleling Professor Piccard's achievements, regulation appears to be entering the stratosphere.

Presumably state economic boundaries are disappearing, at least in the minds of our legislators, and the tendencies are toward the study of what is being done in other states. Ostensibly this is for practical local application; actually the efforts of others are being presented as horrible examples—and complacency is thereby restored. This attitude may be illustrated in an incident of a few years ago while traveling on a train St. Louis bound through northern Arkansas. A particularly loud and obnoxious passenger on the rear platform of the observation car had been expounding forcefully upon the crudity of the people of the section.

"Just look!" he exploded, as we paused at a wayside station. "Look at those Arkansas women. Why, they are little better than barbarians; they don't even wear shoes or stockings."

The conductor, present at the moment on one of his mysterious ticket inspection trips, looked quizzically at the self-styled authority on social conditions and calmly spat over the railing to the station platform.

"Stranger," he drawled, "Where do you-all hail from?"

"Me? I'm from Missouri," was the belligerent reply.

"Well, my friend," with the fleetest of grins, "you mought be intristed in knowin' that we've been runnin' in Missouri for the last thirty mile."

AN occasional glance into our neighbor's backyard is most enlightening, especially if we can adopt some degree of tolerance in the process. We can at least learn what not to do, and that would be a great accomplishment in itself. Take Texas, for instance—and that, you must admit, would be a sizable job both geographically and economically.

There appear to be three major industries in Texas today: agriculture, oil and gas, and public utility regulation. At the present rate of acceleration it won't be long until the last mentioned will be rated first in man power and moneys expended, if not in profits realized. Agriculture in Texas is virtually synonymous with cotton, and, after all, there just isn't anything that can be done about cotton; therefore, the current efforts at regulation are directed toward the oil and gas industries. Texas is now launching an attempt to regulate the rates and charges of common carriers by pipe lines, and therein lies a tale of more than local interest.

Texas has always felt itself a little apart from our other states. Perhaps its early history and perhaps its great size and the manner of its development have created a concept of individualism. Texas fought its own battles in the early days, quite competently it may be admitted, and proposes to continue to do so. As one of the first amendments to the state Constitution Texas introduced so-called "Home Rule"; that is, the municipalities were placed in control of their own public affairs to a large extent and given their own public utility commissions. The state in general has had no direct authority over public utilities and has not now, except an appellate [1] relation in the case of the distribution of natural gas, which is a development of the past few years. The railroad commission of Texas was created by James Stephen Hogg, one of the most famous of Texas' political leaders, who rode into the governor's chair in 1890 largely on this plank and proceeded in the manner of his time to nail it down after assuming office—an old custom not considered vital by our modern school of politicians. Originally created to cope with intrastate railroad problems, its powers rapidly broadened to embrace express companies, warehouses, docks, and belt railways with appurtenant terminal facilities in a manner little different from our other states. In all the years, however, "Home Rule" was not disturbed.

WITH the coming of oil and natural gas, Texas found that she had been blessed with enormous natural resources that for the period from 1900 forward rapidly assumed national importance. The develop-

[1] See footnotes on page 351.

ment and exploitation to date has been accomplished largely by private capital under the rigors of competition. Being a depleting resource and considered as the inherent property of the people, the ways and means of providing protection and regulating exploitation has become the great single problem of the state which, in turn, has passed it along to the railroad commission.

CARRIERS by pipe lines have been under the regulation of the Interstate Commerce Commission for many years. Classification accounts for investment, operating revenues, and expenses have been established for interstate operations. There has been no attempt, however, to regulate the rates and charges of these common carriers by the Interstate Commerce Commission through the establishing of fair value and fair return thereon. Until quite recently practically the same situation prevailed in the regulation of intrastate pipe-line operation [2] by the railroad commission of Texas.

But now, under legislation passed in 1931,[3] the railroad commission is directed to establish and promulgate rates and charges and regulations for gathering, transporting, loading, and delivering crude petroleum by common carriers, including storage facilities incident to such transportation. And the law tells the commission just how it is to be done in the following language:

> "The basis of such rates shall be such as will provide a fair return upon the aggregate value of the property of any such carrier used and useful in the services performed after providing reasonable allowance for depreciation and other proper factors, and for reasonable operating expenses under honest, efficient, and economical management, and provided further that the commission shall have reasonable latitude in the establishment and adjustment of competitive rates."

What a beautiful and characteristically utopian paragraph that is! The members of the railroad commission must have hailed the additional duties set out for them with doubtful enthusiasm. Somehow one is reminded in analyzing the foregoing of a philosophical offering attributed, I believe, to Huxley, who, in defining a tragedy, said in effect that it was a beautiful theory that had been cruelly assassinated by a group of cold-blooded facts. Will the attempt to enforce this law result in a tragedy of regulation? It is inevitable—and the real tragedy is already forecast and represented in the needless and certain waste of the public funds that is sure to follow.

THE law has sustained no legal test to date. However, it is not difficult to theorize to some extent upon what the outcome will be when it shall be tested in the courts. More-

¶ "THERE *are almost insurmountable difficulties confronting the commission in any attempt to promulgate pipe-line rates and charges upon the "fair value—fair return" basis as provided under the law. If these pipe lines were common carriers to any substantial degree there might still be some merit in such an attempt, but they are not.*"

over, from a cold-blooded, commonsense standpoint, it is all too apparent that it forms just another flight into the stratosphere of regulation.

LET us consider for a moment what has already transpired in the testing of certain of the more unprecedented laws regulating oil and gas in Texas.

The first test involved what is known as the common purchaser sections [4] of the law. In effect the law designated that every individual or company engaged in transporting natural gas or petroleum oil, whether common carriers or otherwise, was a "common purchaser" and thereby compelled to purchase all such commodities offered to it without discrimination; that is, it was not sufficient that the pipe lines be made available to the independent producer, but that the transportation agency must actually furnish the market outlet by buying the commodities outright. This was, of course, a most astounding departure from our constitutional rights and quite obviously it did not long survive.

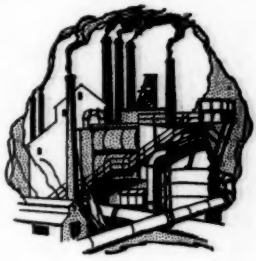
The legal test came in what is known as the Common Purchaser Case,[5] decided in June, 1932, in which a 3-judge Federal court granted a permanent injunction restraining the railroad commission of Texas from enforcing orders promulgated under the Common Purchaser Act against several natural gas companies on the grounds of unconstitutionality. While the court specifically confined its decision to the law as affecting natural gas, taking the position that oil or petroleum was not at issue, it is clearly a precedent that should preclude any further efforts toward enforcement of the act as an entirety.

THE second legal test arose late in 1932 in connection with "proration" orders of the commission in East Texas under the laws relating to "waste" of oil and gas.[6] This involved a more basic and logical attempt to balance production with demand. The law specifically recognized "physical" waste, but excluded "economic" waste, and again a 3-judge Federal court in the case of the People's Petroleum Producers, Inc. et al. *v.* Lon A. Smith, et al., sustained an injunction against the commission. This decision caused Governor Sterling to call a special session of the legislature in November, 1932, which passed a bill extending the powers of the commission to include "economic" waste. It may now be assumed that Texas can control the actual extent of production of these resources. This bill, however, carries a clause through which its provisions terminate September 1, 1935.

SO much for the legal phases to date. Surely some lesson is to be gained from these decisions. It is much easier to pass laws than to enforce them, and in the meantime the people are paying the costs. The question now is, can the commission hope to promulgate rates and charges for common carriers by pipe lines in a manner which would be at once equitable and could thereafter be sustained through the courts? The law is specific. The rates are to be such as will provide a fair net return upon the aggregate value of the property. We could start, of course, by pulling the verbiage apart and asking "What

State Legislation That May Result in a "Tragedy of Regulation"

"Now, under legislation passed in 1931, the railroad commission is directed to establish and promulgate rates and charges and regulations for gathering, transporting, loading, and delivering crude petroleum by common carriers, including storage facilities incident to such transportation. And the law tells the commission just how it is to be done. . . . Will the attempt to enforce this law result in a tragedy of regulation? It is inevitable—and the real tragedy is already forecast."



do you mean—aggregate value?" "Just where and how do we draw the line for honest and efficient management and how, in fact, do we determine the degree of competition?"

The gate is left wide open for legal controversy. We are not concerned with technicalities here, however. Rather let us assume that a liberal interpretation is taken and that "fair value" and all other principles and ordinary practices involved in the fixing of reasonable service rates and charges are implied and adopted.

Now, let us proceed to study this legislation from a practical standpoint—the problem that is faced by the railroad commission. Some idea of the character of investment and the magnitude of the pipe-line carriers might be helpful to an unbiased consideration of its regulatory possibilities.

In a broad way the elements of property and investment are relatively simple. A pipe line consists primarily of a line or system of steel pipe installed under (or over) lands or right of ways, together with such appurtenant standard equipment as may be necessary to gather the oil at the wells and keep it moving to its destination and to store it at such points as may be desired. The construction of a pipe line offers no engineering or structural difficulties that are in any way unusual or uncommon in other industrial projects. In fact, a pipe line is simply the expansion of a connecting link in the production and distribution of a commodity. It is a part of the plant whereby a corporation may complete the operations required in producing, refining, and marketing petroleum products. The fact that a pipe line is classified as a common carrier does not in any way change the nature of the investment itself.

The pipe line, therefore, as a transportation medium, is irrevocably linked up with producing and marketing. Owing to the very nature of oil and gas, which causes rapid changes in the volume of production

and locations of the supply base, the pipe-line investment cannot economically stand alone. The risk must be distributed to all phases of the industry if capital is to survive.

A NATURAL tendency in considering the nature of the pipe-line investment is to compare it with the railroad investment in the thought: first, that the pipe line is rendering a transportation service; and secondly, perhaps, that it has been brought into somewhat the same category as the railroad by the Interstate Commerce Commission. Actually there is little, if any direct comparison. A railroad is ordinarily constructed in a new territory for the purpose of development, and the justification for its construction rests upon the gradual economic changes which take place by virtue of potentialities for movement of commerce and the consequent community growth following thereafter. On the other hand, a pipe line is the immediate necessity of the moment. It starts off at once with its greatest utility, and is subject thereafter to gradual decline measured by the depleting commodity for which it is furnishing transportation.

The railroad then, is economically constructed to serve a growing service demand, whereas the pipe line requires its maximum investment at the beginning and serves thereafter a declining service demand.

It would appear as fundamental, therefore, that the concept of fixing pipe-line rates upon the basis of the fair value of property "used and useful in service" could not stand economically. Capital could not be found to enter upon such a hopeless venture wherein the full use of the investment and consequent return would be momentary and subject thereafter to certain and rapid decline; or if the initial step were to be taken upon such a premise, it would have to be accompanied by a rate of return and provision for amortization all out of proportion to the service rendered or even the capacity to pay.

THE only apparent relation between the railroads and the pipe lines would appear to be in the relative nonmonopolistic status. Rates and charges, in so far as the railroads are concerned, have never been determined upon the basis of valuation. If this were to be done, two lines serving exactly the same territory and having the same terminals, but representing a different mileage and, therefore, investment, would be compelled to apply different rates. Obviously the business of the company having the greater investment would not long survive, whereas the company having the lower investment would ultimately obtain the greater portion of the business and increase its net return accordingly.

The same condition applies to the pipe lines with additional practical difficulties. Pipe lines of different companies originating in the same field and pools, and ultimately reaching the same destination, must obviously charge the same rates, regardless of the relative investment in the facilities or the degree of "use" of such facilities at the moment.

Did the legislature think that the railroad commission could find ways and means to enforce a law involving principles that even the Interstate

Commerce Commission has considered impossible?

Or was it intended that the "reasonable latitude" granted the commission would permit a strategic retreat when faced with a competitive barrier?

A GLANCE at the complicated network of pipe lines in Texas, when considered in the light of the innumerable interests involved in ownership and operation, and the variables of normal production in the fields, to say nothing of the added factor of instability under the "proration" program, is sufficient to show the utter impracticability of application of the law in its present form.

Now, what really accounts for this law? It was simply an attempt to curtail the profits of the only industries that were apparently making any money in the state of Texas. That's all. The conservation laws and even the common purchaser laws had some logical background and were constructive in nature, regardless of their constitutionality. Further, the state does not even know whether the pipe lines are making money or not. The oil industry has made money in the past, but certainly has been in bad straits for years and, if we are to judge from published reports, still is. Nevertheless the statements of pipeline operation submitted to the commission under the regulations appear to indicate substantial earnings. A proper analysis, however, would show that this is nothing more than a bookkeeping matter.

FIGURES compiled by the railroad commission of Texas from reports of the pipe-line companies show a total of approximately 31,800 miles of oil pipe lines installed as of June 30, 1932, of which about 10,500 miles are classified as gathering lines and 21,300 as trunk lines. These facilities are owned by ninety or more separate companies; however, two thirds of this entire mileage is owned and operated through subsidiaries by about a half dozen of the large oil companies. It is these companies that the law was evidently designed to reach, and the supposed earnings were those as reported by their pipe line subsidiaries. A tentative computation for the year 1931 was reported to show in excess of 19 per cent return upon the investment for a substantial group of pipe-line companies, including all of the larger companies.

This sounds like big money, when we consider that the reported investment of the same group approximated $400,000,000, or about $1 a barrel for the oil moved through their lines in that year.

But is it logical to assume that this is a proper statement of the facts? Is

¶ "THE *only means by which the true investment in the pipe lines could be determined would be through a survey and appraisal of the oil industry as an entirety. Such an attempt would result in a national situation second only to the valuation of the railroads by the Interstate Commerce Commission.*"

it reasonable to infer that whereas the big oil companies lost money on production, refining, and distribution, they made money on the transportation handled by their subsidiaries?

Certainly not!

THE answer, of course, is that the pipe lines have not been burdened with their fair proportion of the huge capital losses which are inevitably linked with the oil industry, and—in turn—the operating statements fail to provide properly for the similar hazards of the future. The investment of the companies has heretofore been reported under the limited classifications established for common carriers by pipe lines, and the figures have been confined almost entirely to the direct expenditures in construction. There has been omitted, for example, the value of the oil required to fill the lines, a substantial and permanent investment without which the commodity could not move at all and which is just as essential as the rolling stock is to a railroad transportation company.

Then there is the enormous intangible but equally as necessary capital that has gone into the complete economic unit and which has been absorbed by the producing and marketing ends of the business. The only means by which the true investment in the pipe lines could be determined would be through a survey and appraisal of the oil industry as an entirety. Such an attempt would result in a national situation second only to the valuation of the railroads by the Interstate Commerce Commission—hardly a practicable "job" for the railroad commission of Texas.

AGAIN there would be the question of accounting, almost as involved. Annual charges to depreciation for pipe lines assume complications not present to any material degree in other forms of utilities. The engineering concept of life expectancy of the physical properties might apply in isolated cases, but generally would have little, if any bearing in a broad and equitable investigation. The life of gathering lines is controlled primarily by the rate of decline and ultimate life of the pool, and the life of trunk lines, in turn, by the conditions in the fields which they serve. In specific systems the outlet demand for petroleum and its products, nationally and perhaps internationally, regulates the business and tends to influence the life of the system. Finally, the limitations of production to market demand, as provided under the latest 1932 statutes, will directly influence the degree of use and consequent life of the pipe lines in a manner subject to change without notice and entirely apart from other considerations.

Reserves for retirement and replacement, as set up at present by the various pipe-line companies, are being accrued through annual charges ranging from as low as 3 per cent to as high as 15 per cent or more per annum. This wide range, as applied to properties essentially simple in nature and directly comparable in character of investment, might reflect unsound accounting practices, but it is more likely that it proves the necessity for individual treatment by the respective pipe lines in accordance with each particular situation.

So much for the almost insurmountable difficulties confronting the

commission in any attempt to promulgate rates and charges upon the "aggregate value—fair return" basis as provided under the law. A frank and forceful recognition of the impractical provisions of this law upon the part of the commission would save the people of Texas a lot of money. It might even create an important public sentiment against poorly conceived legislation—legislation that permits political exigencies to outweigh the sane and logical approach to basic regulatory problems.

If these pipe lines were common carriers to any substantial degree there might still be some merit in an attempt at enforcement, but they are not. One of the largest oil companies stated in a recent interview that 95 per cent of all the oil run by its subsidiary pipe-line company was its own oil, and others will approximate the same percentage. Now assume, we will say, that pipe-line rates could be lowered through orders issued under this law, the burden would immediately be shifted to the production, or more likely to the refining and marketing end of the business. In the instance stated the benefit would affect only 5 per cent of the common carrier operations, and in fact whatever the average percentage, it would be linked very largely with producers or refiners who themselves controlled production and market outlets.

There is no question but that there are many problems affecting the movement of oil by pipe line, particularly those arising through joint transportation in interstate operations. Perhaps there are matters that the railroad commission of Texas might well investigate for the benefit of both the commonwealth and the capital employed. It should not be overlooked, however, that many of the people of Texas, in whose interests this law was presumably enacted, are themselves interested financially in the stability of the oil companies through the holding of the securities therein.

Oil is one of Texas' greatest assets and has brought untold wealth to the state. Perhaps it would be well to consider carefully the position of the pipe lines in the entire economic structure before squandering more of the flowing gold just for the thrill of further adventure in the stratosphere of regulation.

Notes

[1] The Cox Gas Bill, passed by the Thirty-sixth Legislature in 1920, gave the railroad commission of Texas general jurisdiction over all natural gas utilities, including production, transportation, and sale; and in addition created an appellate jurisdiction over rates of distribution whereby the decisions of local commissions may be taken to the railroad commission on appeal.

[2] Production of oil was placed under control of the commission through an act passed by the Thirty-fifth Legislature, effective June 20, 1917, which designated as "common carriers" and "public utilities" the pipe lines engaged in transportation, and carried a generic provision conferring power upon the commission to regulate the rates of such transportation. No working principles were laid down, however.

[3] Introduced as House Bill No. 19, Chap. 28, § 6A, and now incorporated in Revised Statutes of Texas, 1925 (as amended) as Art. 6049-a, § 6-a.

[4] Article 6049a, §§ 8, 8a, 8aa, 8b, Rev. Stats. of Texas, 1925 (as amended).

[5] Texoma Natural Gas Co. et al. *v.* Texas R. Commission, 59 F. (2d) 750, P.U.R. 1932E, 509.

[6] Article 6014, Rev. Stats. of Texas, 1925 (as amended).

What Others Think

The Current Trend toward Governmental Regulation: Its Social and Economic Portents

In this age of super-specialization there is an overwhelming tendency upon the part of our leaders in the various branches of the arts and sciences to isolate themselves within the arbitrary boundaries of their own fields. Too often have our economists shied away at the thought of sitting down at table with their legal brothers; too often have our gentlemen of the bar "refused to take jurisdiction" over economic problems; too often have our scientific men gone on bullheadedly with the development of material discoveries and inventions without recognizing the social consequences of their acts. In short, the curse of specialization lies in the fact that we are prone to consider the various phases of our life as locked off into numerous water-tight compartments labelled: "Law and Government," "Finance and Economics," "Morals and Religion," "Engineering Science," "Medical Science," and so forth. And this ingrowing attitude has not made for better understanding.

The recent report of President Hoover's Research Committee on Social Trends levels these barriers to our view. True, it takes two volumes of 1,600 pages in which to do it with a promise of thirteen additional volumes of "supporting data," but it has done the job thoroughly. By way of a digest, we have also an official 30,000-word summary of the report, which gives us a panoramic view of how all the different pieces of the jig-saw puzzle of American life are fitted together. If you would know what is going on in American life today, probably no better or briefer way is now available than this pamphlet which can be read and digested within two hours.

The report gets right down to the grass roots of human existence, with a searching analysis of the three major factors that formerly governed it—the family, the church, the government. We see how, step by step, emphasis and responsibility have shifted from the family and the church to the government. Education, health, economic security—all these problems used to be settled at the family hearthstone during the agricultural phase of our national infancy. Then came the machine, industrialization and concentration of population in large cities. Result: governmental education, governmental supervision of sanitation, foods, and detailed regulation of water, fuel, light, and transportation service, and governmental regulation of the modern common employers—industry and commerce.

But with the gradual delegation of these functions to centralized agencies subject to governmental regulation, such as public utility companies, the necessity for the family diminished and there followed a corresponding weakening of the family ties. Our birth rate curve is downward; our divorce rate curve is upward. Likewise the church, upon which the family of our ancestors relied for moral, spiritual, and social benefits to the individual, is losing ground. The modern American citizen is beginning to go elsewhere for his moral, spiritual, and social aids; either that or he is doing without them.

These trends should in themselves be of vital significance to modern industry purely from a business standpoint. For instance, future programs of the electrical and automotive industry are or should be based to some extent upon the

curve of increasing population, but the fall of the birth rate and the rise of the divorce rate will require that considerable adjustments be made in estimates of the pace for future expansion. Rural electrification, for example, faces a definite saturation point in the not far distant future if these trends continue. Likewise, the falling birth rate sounds the death knell of the old sure fire road to fortune—real estate. Time was when ownership of any ten acres of land on the outskirts of any American city was good for ultimate affluence. All one had to do was to sit and wait for Mr. Stork to make his fortune. No more!

ASIDE from immediate commercial considerations, these trends have thrown an increased responsibility upon our government. And how is our government meeting it? With every new delegation of the former functions of the family to commerce, there arises need for social control—in other words, governmental regulation.

The committee's report finds our Constitution under considerable strain. Our Supreme Court has stretched and strained the document until its future integrity seems to remain with the ingenuity of our judges. The report states:

> "The validity of social legislation obviously cannot be determined within the four corners of the Constitution. 'Due process,' 'equal protection,' 'interstate commerce' do not have precise content. They can be known only by particularized definitions from the congeries of cases. The cases deal with issues and situations so varied and different as to defy profitable expression in generalities. Due process of law as a test of the validity of state legislation under the police power may be said to require that the laws not be arbitrary or unreasonable. All such laws place some restriction on individual freedom or the use of property. The question, then, is whether in the light of the social and economic conditions involved the restriction is reasonable. The answer depends upon the opinions, beliefs, and even the prejudices of judges, their knowledge of the basic conditions involved, their view of the proper scope of governmental activity, their willingness to let legislatures experiment with a social and economic theory with which they are not sympathetic. The personal elements involved destroy the clear force of precedents and render prediction impossible."

Fortunately, we have hit upon a happy hybrid to bridge the difficulties encountered in solving modern problems with the three rigid implements provided by the Constitution; to wit: the executive, the legislature, and the judiciary. We have discovered a sort of governmental trinity, combining in one tribunal the attributes of all three departments. This modern, flexible, arm of the government we have called the commission. The report traces the growth of this regulation as follows:

> "Common carriers and other public utilities were assumed from the first to be subject to such regulation without serious question. Regulation of rates on fire insurance policies was sustained in 1914 and regulation of prices of rooms and terms of leases (as an emergency measure due to the housing situation after the World War) in 1921. About that time four appointments were made to the Supreme Court, the new judges in nearly every instance becoming a part of the majority and writing the opinions. Subsequently, up to 1931, there was a tendency on the part of the court to limit the number of public businesses. Thus in 1927 the New York statute limiting the resale price of theater tickets by brokers was nullified; in 1928 a New Jersey statute regulating fees of private employment agencies was annulled; and in 1929 a Tennessee statute regulating the price of gasoline met the same fate. By December, 1930, however, the previous majority had become a minority and by a five to four decision a New Jersey statute regulating commissions of insurance agents was upheld. Other expressions of the court, or at least its new majority, have indicated a possible expansion of the field of public interest and an insistence upon the presumption of constitutionality of legislative acts unless definite facts to the contrary are presented. Any prophecy of the beginning of a new trend either toward broadening or restricting the concept becomes futile without knowledge of the philosophies of those who will sit on the bench during the next decade and, in addition, the probable drift of controlling public opinion on specific issues."

THE report goes on also to trace the growth of the individual commission's powers within its own scope: first service, then rates, security issues,

and now intercorporate relations, as evidenced by the state commission activity in the holding company field, as well as the Federal Trade Commission's activities. The commissions, originally called upon to protect only the patrons of utility service, are now being called upon to protect the investors and will probably be called upon to exercise greater and greater control as the social trends continue.

And how does the public like these commissions? Are they here to stay or do they represent but a transitional phase in our governmental development? The report states:

> "Popular attitude towards commissions, however, should be noted. They have not yet acquired such high sanction and dignity as courts. Their actions are apt to be called bureaucratic; the wisdom of their rulings doubted; their fairness challenged. It may be that their phenomenal rise to places of importance in modern life in a relatively short period of time, the informality of their proceedings, the speed of much of their activity, the absence of elaborate procedures, the direct and intimate contact with parties affected, the absence of aloofness and independence associated with courts, and their occasional political complexion all militate against a ready acceptance of them as vital and important governmental agencies. It is interesting matter for speculation if definite acceptance of them as governmental institutions and further perfection of their procedures, techniques, and personnel will establish them as institutions of the same high sanction and prestige as courts."

THE report forsees a trend in regulation towards Washington with a corresponding diminution of activity by the states:

> "In conclusion, two major trends in administrative procedure should be noted. Prominent is the shift of control to the Federal government and a complete or partial abdication or renunciation by the states. Further, more and more do problems of administrative control call for coöperative regulation. And the trend, during the last decade especially, has been and, it is thought, will continue to be toward shaping the administrative procedure to fit the problem rather than to force the problem to fit rigid administrative procedures. This strong call for coöperative administration promises to militate against a definite recession to individual states of power exercised by the Federal government. On the other hand, it prophesies a closer and more intimate fusion of administrative resources by two or more states or by the states and the Federal government in an attack on problems that override state lines or that are dependent for effective regulation on mobilization of independent resources. The result may well be a finer balance of power between state and nation and a countertrend from centralization of power in Washington as respects problems regional or local rather than national in character."

FINALLY, the committee visualizes the possible formation of a great super commission in the future, to correlate the present sorry piecemeal activities of our many administrative tribunals. This, claims the report, is the great need of today—the need for coöperative planning and action by our various leaders. What we need is not an economic plan or a governmental plan or both. "The new synthesis," we are told, "must include the scientific, the educational, as well as the economic and also the governmental. All the factors are inextricably entwined in modern life and it is impossible to make rapid progress under present conditions without drawing them all together." Viewed in this light, the decline of the family influence ought to be of as much concern to the utility executive and governmental official as to the clergyman.

But how can this be accomplished? After discussing preliminary measures, the report makes this suggestion:

> "Out of these methods of approach it is not impossible that there might in time emerge a National Advisory Council, including scientific, educational, governmental, economic (industrial, agricultural, and labor) points of contact, or other appropriate elements, able to contribute to the consideration of the basic social problems of the nation. Such an agency might consider some fundamental questions of the social order, economic, governmental, educational, technical, cultural, always in their interrelation, and in the light of the trends and possibilities of modern science."

BUT what if we do not try to coördinate our national thinking? What if we elect to follow our present policy of drift and piecemeal development?

The committee warns us that ultimate disaster may be the only alternative to some sort of social planning. We are warned that nothing short of the combined intelligence of the nation can cope with our present predicament. Otherwise, we may ultimately be faced with the loss of our democracy in a dictatorship accompanied by "violent revolution, dark periods of serious repression of libertarian and democratic forms, the proscription and loss of many useful elements in the present productive system."

—F. X. W.

RECENT SOCIAL TRENDS IN THE UNITED STATES. Report of the President's Research Committee on Social Trends. Volumes I and II. New York: The McGraw Hill Book Company. Price $10.00.

The Revolutionary Social Changes Caused by the Modern Industrial and Utility Corporation

"POSED as a major social institution, and its development envisaged in terms of revolution," the modern corporation of the large industrial and public utility type is startlingly portrayed in a scholarly work by Adolf A. Berle, Jr., and Gardiner C. Means, both teachers of law and economics at Columbia University. Their book entitled "The Modern Corporation and Private Property," was prepared under the auspices of the Columbia University Council of Research of the Social Sciences, acting on behalf of the Social Science Research Council of America.

The major theme of the book is that the development of huge corporations which are diffusely owned but closely controlled has brought about a momentous change in the legal as well as social status of an increasingly large proportion of privately owned property. Says Mr. Berle in the introduction:

> "The transition of perhaps two thirds of the industrial wealth of the country from individual ownership to ownership by the large publicly financed corporations vitally changes the lives of property owners, the lives of workers, and methods of property tenure. The divorce of ownership from 'control' consequent on that process almost necessarily involves a new form of economic organization of society."

The study is largely one of the evolution of "control"—"the rise of a power virtually new in the common law"—as an entity separate from and independent of ownership. The authors hold it "fair to assume that much more than half of industry is dominated by these great (corporate) units," and they find that, as of 1930, "nearly half of industry was in the hands of a few hundred men." They state:

> "Those who control the modern corporation own so insignificant a fraction of the company's stock that the returns from running the corporation profitably accrue to them in only a minor degree."

AFTER analyzing different types of control and ways by which control can be utilized, the authors "conclude that the interests of ownership and control are in large measure opposed if the interests of the latter grow out of the desire for personal monetary gain."

Being "practically powerless through his own efforts to affect the underlying property," the stockholder-owner's position changes from that of an active to that of a passive agent. "The net result . . . is to throw him upon an agency outside the corporation itself —the public market," to which he looks for guidance, evaluations, in some degree protection, and in large measure returns. All of this, the authors say, tends to modify the traditional logics of property and profits. Out of it grows a net set of values, as yet only slightly equated socially and legally, as to corporate property and the relations of owners and managers to such corporate property.

"As a qualification on what has been known as private property in Anglo-American law, this corporate development represents a far greater approach towards communist modalities than appears anywhere else in our system. It is an odd paradox that a corporate board of directors and a communist committee of comissars should so nearly meet in a common contention."

They foresee something like socialization of large corporations.

"The control groups have, rather, cleared the way for the claims of a group far wider than either the owners or the control. They have placed the community in position to demand that the modern corporation serve not only the owners or the control but all society. . . . It is conceivable —indeed, it is almost essential if the corporate system is to survive—that the control of the great corporations should develop into a neutral technocracy. . . ."

The authors intimate a belief that such is as apt to come about through social evolution as through governmental interference. They say:

"The future may see the economic organisms now typified by the corporation not only on an equal plane with the state but possibly superseding it as a dominant form of social organization."

In the authors' grouping and classifying of the 200 largest nonbanking American corporations, public utility companies occupy big places; otherwise, they are not dealt with separately from other kinds of corporations.

—Aaron Hardy Ulm

The Modern Corporation and Private Property. By Adolf A. Berle, Jr., and Gardiner C. Means. Chicago: The Commerce Clearing House. 1932.

The Hand of the "Money Trust" on the Utilities

At this particular time, when the public is inclined to scrutinize critically the activities of banking and financial institutions, the reprinting of "Other People's Money" by Justice Louis D. Brandeis is of peculiarly timely interest. The thesis of the book (which was first published in book form in 1914) is early made clear by a number of quotations, together with pertinent comments by Justice Brandeis.

President Wilson is quoted as saying in 1911, when governor of New Jersey: "The great monopoly in this country is the money monopoly. So long as that exists, our old variety and freedom and individual energy of development are out of the question." Likewise, the Pujo Committee in 1912 under the leadership of its counsel, Mr. Samuel Untermyer, is cited as exposing conditions of credit control whereby a few men dominated the industry and business of America at that time. Throughout the work, Justice Brandeis employs the findings of this body for corroboration of his statements of fact. It is plain that the author is skeptical of monopoly (at least unregulated) in the control of money and credit; he couches his distrust of the so-called "Money Trust" in vigorous language—"banker-barons," "provincial allies," "satellites," and "financial oligarchy."

What were these dominant elements which are characterized as "our financial oligarchy?"

Essentially they were three in number:

(1) The consolidations, affiliations, and gentlemen's agreements of banks and trust companies;

(2) The railroad and public service corporation combinations;

(3) The investment bankers, the most potent of all these factors.

Of interest are Justice Brandeis' views on the rôle played by the investment bankers in the creation of the "Money Trust." He writes:

"They became the directing power in railroads, public service and industrial companies through which our great business operations are conducted—the makers of bonds and stocks. They became the directing power in the life insurance companies.

. . . They became the directing power also in banks and trust companies. . . . Thus four distinct functions, each essential to business, and each exercised, originally, by a distinct set of men, became united in the investment banker. It is to this union of business functions that the existence of the Money Trust is mainly due."

JUSTICE Brandeis declares that the original function of the investment bankers "was that of dealer in bonds, stocks, and notes," essentially a merchant function. Unfortunately, the bankers were not content to deal in securities; they wished to manufacture them and accordingly became promoters or the allies of promoters. As examples of this expanding scope of their activities, the promotion by J. P. Morgan and Company of the Steel, Harvester, and Shipping Trusts is cited. Then "adding the duties of undertaker to those of midwife," the bankers served on "protective committees" and participated as "reorganization managers" for insolvent corporations, finally achieving control. In such manner the Morgan associates and Kuhn, Loeb and Company secured a hold on many important railroads.

The matter does not, however, end with promotion and reorganization. All dynamic enterprises need from time to time new capital, which the banker can most easily supply. A bargain is struck whereby the banker secures a share in the management of the needy corporation in exchange for a supply of capital.

The control of corporations assures the banker of a supply of securities. It is probably more difficult to control the demand, because of the large number of small, scattered investors. These people, however, can be influenced and are influenced greatly by the advice of the bankers. When they are reluctant to accept current issues of securities, the banker may turn to a more convenient source, a controlled insurance company, a trust company, or a bank.

WHAT are the evils of the investment banker combinations? The author mentions three: First, the bankers levy an excessive toll upon the whole community. Second, they suppress competition, which in turn leads to monopoly profits, an arrested economic development, and a failure to reduce the costs of production and distribution. Finally, the most serious result of the policy of concentration is held to be the suppression of industrial liberty, because "nearly every enterprising business man needs bank credit," and because "nearly every enterprising business man and a large part of our professional men have something to sell to, or must buy something from, the great corporations to which the control or influence of the money lords extends directly, or from or to affiliated interests."

During the late but now defunct "New Era," the warnings of Justice Brandeis and others against the perversions and the excesses of the investment bankers were unheeded. Today people are more willing to listen to the man who dares to state a view not held by the plutocracy.

Justice Brandeis has selected a vital weakness not only in the pre-war era but in our present economic set-up as well. The power of the investment banking groups to control industry and commerce must be patent to all. They or their associates sit on the board of directors of almost every important corporation in the United States. They help to select the executives of these groups. They compel a subservience on the part of business men and workers which it is difficult to conceive. They have promoted or helped to promote in recent years such public enterprises as the Insull holding companies and the W. B. Foshay group, both of which are now in bankruptcy, to the sorrow of the investing public.

The investment bankers and their allies must put first things first. They must realize that the *intrepreneur* function requires a different technique than the savings and investment function. They must also realize, as a well-respected student of banking and finance said to me recently, that commercial banking and investment banking do not mix well.

It is strange, indeed, that many men, who object to government ownership or control of industry on the ground of inefficiencies due to the extent of operations, have promoted industrial, public utility, and railroad combines often valued at several billion dollars, designed not to secure economies but to control the market. If the Federal government is incapable of operating huge railroad, banking, or hydroelectric systems how is it possible for an investment bank like the J. P. Morgan and Company to keep account of the diverse industries they control—railroads, mines, electric, gas, insurance, and steel companies?

Considerable space in the book is given over to questions of the methods by which combinations have taken place, of the significance of interlocking directorates, of the curse of bigness, and of the inefficiency of the oligarchs. Several proposed remedies for curbing the growth of money monopoly are mentioned in various places; probably the most immediate and necessary action, in Justice Brandeis' view, was publicity, thorough-going publicity of banking wealth, banker's commissions, and the participants in each underwriting syndicate. Other measures favored were restrictions on interlocking directorates, promotion of coöperative credit associations, and a strike against the "banker-barons" on the part of the investing public.

—Ralph L. Dewey,
Ohio State University.

Other People's Money and How the Bankers Use It. By Louis D. Brandeis. New York: Frederick A. Stokes Company. 223 pages. $2.00, 1932.

Should the Commissions Fix Wages of Utility Employees?

One of the most interesting and probably one of the most puzzling problems with which the commissions are being asked to deal during these depression days involves the relations of a utility with its own employees. The commissions in former years have left the matter of wage scales and labor policy to the managerial discretion of the operating utilities, subject only to correction by the commission where the charge to operating expenses indicated a plain abuse of this discretion. There have been cases in which the commissions felt obliged to make such corrections, but they have been very rare and nearly always involved the high salaries paid superior officials or directors — never the general wage scale paid to such employees as linemen, switchboard operators, maintenance men, and so forth.

Hard times, however, have brought increasing pressure to bear upon the commission to act in disputes involving utility industrial relations. Strange to say, the pressure has not always been in the same direction; in New York, it seems to favor the employees; in South Carolina it seems to act against their interest.

The New York incident arose over the recent dismissal of certain employees in the alleged interest of necessary operating economy by a New York city utility. Thereupon, the National Committee on Power Utilities and Labor filed a complaint with the New York Public Service Commission, asking for an order requiring the reinstatement of the dismissed employees. The complainant argued that the public service law could be interpreted to give the commission jurisdiction over acts affecting the adequacy and continuity of service or which were unjust or unreasonable.

The counsel for the utility argued:

> "If the commission has the right or the duty to direct just how many employees shall be on the payroll of every public service corporation and the reasons for

every discharge or laying off of an employee and the adequacy of the compensation paid to each, there is no detail of the business which is outside its duty to investigate and supervise. The approval of the commission would have to be obtained for the purchase of every ton of coal and for every detail of minute expenditure."

Commenting upon the position taken in the proceeding by the utility company, *The Nation* stated editorially:

"Under a rigid and reactionary interpretation of the public-service statute, this may conceivably be maintained. Chairman Milo R. Maltbie, while asking for additional briefs, pointed out that the courts have ruled that the commission has no jurisdiction except such as is expressly conferred. He recalled that when the public service commission was established in 1907, exclusion of labor questions from its jurisdiction was taken for granted. But that very contention justifies a new stand by the commission. A quarter of a century's experience has shown that regulation, even within the limited field prescribed for the commission, has proved inadequate. Service, on the whole, is satisfactory, but rates have continued excessive, owing chiefly to the limitations imposed upon commissions by the courts. Worker and investor—surely two other 'parties at interest'—are wholly without safeguards. Counsel for the plaintiffs, Jerome Count, finds in the public-service law adequate ground for an interpretation sufficiently broad to include regulation of labor policies. It is high time that this issue be joined. If the commission rules that it has not this power, the law needs prompt revision to include protection of both worker and investor, as well as strengthening to provide true protection of the consumer. The companies will be well advised to cease opposing the extension of regulation, for public ownership looms as the imminent and only possible alternative."

In South Carolina, we find the utility seeking to keep employees hired at uncut wage levels, as against the decision of the commission of that state to lower employee wages in the interest of lower rates for service. In a recent rate case, the South Carolina commission's opinion stated:

"Also the evidence before this commission shows that notwithstanding the general decline in prices and reduction in wages and salaries which has been effected in all businesses since 1929, the company had effected no reductions whatsoever in its scale of salaries or wages. The commission finds and concludes that this action on the part of the company is unjustifiable and does not comport with public policy. The commission knows of no reason why the employees and officers of a public service corporation should be allowed to form a privileged class of persons who are not affected, in regard to their salaries or wages, by the general world-wide economic conditions, particularly since evidence shows at the present time a dollar has very much greater purchasing power than it did a few years ago. The commission is, therefore, of the opinion, and so finds, that as against the ratepayers of the state of South Carolina, the company's operating expenses, so far as they are charged for wages and salaries, should be reduced by not less than 20 per cent. It is common knowledge that all over the state of South Carolina, and indeed throughout the United States, wages and salaries of all persons, including particularly public officials, have been reduced from 10 per cent to 50 per cent."

The South Carolina commission conceded, of course, that it had no authority to regulate the wage scale of the utility's employees *per se*, but it claimed the right and (as in this case) the duty to cut down the allowance for that item in the operating expense account. The net result, of course, would require the utility to pay the difference out of the funds remaining for earnings, if it desired to keep all its employees working without wage cuts.

W. R. N.

Utility Fights Labor Curb. *New York Times.* February 9, 1933.

Re Southern Bell Telephone & Telegraph Co. Docket No. 1166, Order No. 921.

Editorial. *The Nation.* February 22, 1933.

¶ "The *report on railroads is pretty optimistic. All the railroads need is reorganization, economy, intelligent management, less interference from the I. C. C., and 50 per cent more business.*"

—Howard Brubaker

Recent Utterances in Congress about the Utilities

In the Senate

FEDERAL TRADE COMMISSION

SENATOR Schall (R.), of Minnesota, described the history and activities of the Federal Trade Commission and commended particularly its work in investigating electrical utilities. (*February 11, 1933.*)

MUSCLE SHOALS

SENATOR McKellar (D.), of Tennessee, obtained unanimous consent to have printed in the *Record* an editorial on Muscle Shoals written by the Hon. Josephus Daniels, former Secretary of Navy under President Woodrow Wilson. The editorial was entitled "Constructive Conservation—A Backward Glance," and commended the announced plans of President Roosevelt for the development of the Tennessee basin. (*February 11, 1933.*)

BOULDER DAM CONSTRUCTION

SENATOR Oddie (R.), of Nevada, discussed at considerable length the alleged unfair labor conditions in the Boulder Dam construction. Senator Oddie also defended the claimed rights of the state of Nevada with respect to the Boulder Canyon project. (*February 15, 1933.*)

NATIONAL TRANSPORTATION COMMITTEE

SENATOR Fess (R.), of Ohio, obtained leave to have reprinted in the *Record* the recent report on the national rail survey and recommendations for reforms of the National Transportation Committee, of which the late President Coolidge was chairman, and which also includes in its membership former Governor Alfred E. Smith of New York, who wrote a separate report. (*February 15, 1933.*)

GOVERNMENT OWNERSHIP OF RAILROADS

SENATOR Brookhart (R.), of Iowa, obtained leave to have reprinted in the *Record* an editorial from the Washington (D. C.) *Herald* of February 21st, entitled "Government Ownership Offers Only Solution of the Railroad Problem." (*February 21, 1933.*)

COST OF UTILITY PROBE

SENATOR Robinson (D.), of Arkansas, obtained leave to have inserted in the *Record* a memorandum for the Senate Appropriation Committee describing the cost of the completion of the public utilities inquiry by the Federal Trade Commission. The memorandum was signed by Francis Walker, chief economist of the Federal Trade Commission. (*February 22, 1933.*)

In the House

WASHINGTON STREET CARS AND TAXICABS

ON motion of Mrs. Norton (D.), of New Jersey, a chairman of the District of Columbia committee of the House, Senate Joint Resolution 248, "to authorize the merger of street railway corporations operating in the District of Columbia, and for other purposes," was passed by the House. During the discussion, Representative Blanton (D.), of Texas, accused the Washington, D. C., street railways of mismanagement, and urged the requirement of public liability insurance for taxicab operations in the city of Washington. Mr. Blanton stated that three members of Congress had claims amounting to $5,000 against taxicab operators in the District of Columbia on which they could not collect "a 5-cent piece." Mr. Stafford (D.), of Texas, commented on the "conversion" of Mr. Blanton to the need of regulation of taxicabs in the District of Columbia. (*February 13, 1933.*)

TAXICAB REGULATION IN WASHINGTON, D. C.

MR. Boylan (D.), of New York, advocated stricter regulation of taxicabs in the District of Columbia, particularly with respect to meter rates and the requirements for public liability insurance. Mr. Boylan said that he was "credibly informed that there are judgments today exceeding a half million dollars in the courts of the District of Columbia; judgments secured on account of personal injuries caused through the reckless operation of these taxicabs." (*February 14, 1933.*)

MUSCLE SHOALS

REPRESENTATIVE Culkin (R.), of New York, spoke against the proposed Tennessee valley development because of alleged unwise intrusion of the government into the field of private business, and because of the alleged unwise policy in using tax funds to bring into existence more farm lands to add to the existing surplus thereof. (*February 22, 1933.*)

The March of Events

Coolidge-Smith Transportation Report Filed

REGIONAL consolidations of the nation's railroads, "looking eventually to a single national system," should be hastened, and, where necessary, enforced, the National Transportation Committee declared in its long-awaited report which was made public February 14th. The committee was organized on October 7th at the behest of the savings banks, insurance companies, colleges, and other heavy investors in railroad securities under the chairmanship of the late Calvin Coolidge, to investigate the condition of the railroads and transportation business generally.

Its other members are Bernard M. Baruch, vice chairman; former Governor Alfred E. Smith; Alexander Legge, former head of the Farm Board and president of the International Harvester Company, and Clark Howell, publisher of *The Atlanta Constitution*, and a director of The Associated Press.

Reform of present operating and financial methods of the railways; drastic amendment of the rate-making provision of the Congressional Transportation Act; relaxation of government subsidies of waterways, and regulation of all forms of transport competitive to the railroads are along the recommendations of the committee.

Emergency measures to meet the present situation were also urged by the committee, which listed first among these, revision of the bankruptcy proceedings to facilitate corporate reorganizations where necessary.

Repeal of the recapture clause of the Transportation Act, under which prosperous companies were forced to contribute from their earnings to weaker companies, was also recommended as an emergency measure. Revision of the statutory rule of rate making which requires costly and cumbersome valuations of railroad properties, and the substitution of a simpler requirement which would give an adequate return to well-managed companies was the third emergency measure approved by the committee.

The fourth and last was the recommendation that the requirement that Reconstruction Finance Corporation loans to railroads be made on "marketable collateral" be changed to "adequate security." It was held, however, that the government's commitment should be insured by priority of lien or prospective earnings.

In a separate but brief report, former Governor Smith sharply criticized the present valuation cost theory, which he said tends to "put the seal of approval on existing chaotic and wasteful railroad organization." He pointed to the expense and the "complete breakdown" for the formula of present valuation and recommends the substitution of common sense for "this maze of regulation and red tape."

Mr. Smith also recommended the abolition of the Interstate Commerce Commission and its replacement by "a new department headed by one man or a one-man bureau head in the Department of Commerce." The other members of the committee urged that the commission be continued, but relieved of certain duties described as obsolete and that the commission be hereafter vested with regulatory authority over other forms of transport.

Mr. Smith said that the testimony offered did not convince him that "the automotive competition is at this time as serious a menace to the railroads as they claim it to be," although he conceded that the regulation of common carriers on the highways might be desirable. He suggested caution in further taxation of motor vehicles.

All four signers of the report affirmed that no theory of rate making is justified which seeks to preserve unwieldy capital structures.

Freight Glider Plane Towed Successfully

ONLY ten lines long was the item that recorded in the February 13th edition of the New York *Times* the successful towing of Willy Farner and 110 pounds of mail through the air over the Alps from Zurich to Milan. Yet transportation experts admitted that it may mark another stage in the evolution of aerial transportation. Farner, a famous pilot of motorless gliders, was cast off by the towing airplane and coasted to the air field at Milan in ten minutes. The experiment raises the possibility of trains of planes hauled through the air by powered "locomotive-planes." It would be possible to cut off and drop gliders successively while passing over different cities without stopping the complete train. A subsequent editorial on the subject in the New York *Times* stated:

"European countries have discovered that short airlines are not highly profitable, yet that there is a real demand for service between cities only two hours apart by air in so densely populated a country as Germany. Possibly the air-train may solve this prob-

lem. Engines, fuselages, instruments, and accessories are expensive. If one set will answer for a whole train the saving is obvious."

Although Farner is the first to be towed in a hazardous flight over the Alps, he is not the pioneer "brakeman" of the air. Anthony Fokker suggested at the International Aeronautic Exposition in Paris in 1921, the feasibility of towing gliders. Subsequent experiments have been made by German pilots.

Senators Support Federal Trade Commission

SENATE liberals, firm in their conviction that the sweeping power utility inquiry of the Federal Trade Commission should be continued, won the Senate Appropriations Committee's approval on February 11th of more money for carrying on the investigation. Without a record vote, the committee increased the $510,000 which the House voted the commission for the coming fiscal year in the billion dollar independent offices supply bill to $790,000 and stipulated the $280,000 should be available for completing its utilities probe. The commission received $1,400,000 in the current fiscal year. The action was recommended to the full committee by a subcommittee after Senators Walsh of Montana, Norris, and Nye, along with commission spokesmen, had said that if the commission were limited to the fund allowed by the House of Representatives, the utilities inquiry would be halted where it stood, far from completion.

Alabama

Lower Rates Sought in Muscle Shoals Area

THE first governmental act resulting from President Roosevelt's recently announced plan to develop the Tennessee river valley was taken on February 5th at Florence, Alabama, with a view to securing lower rates for electricity developed from the Wilson Dam at Muscle Shoals for the cities of Florence, Sheffield, and Tuscumbia. The Florence city commission refused to renew its 30-year-old franchise with the Alabama Power Company, which expired March 12th, and Mayor Lee Glenn told the United Press, according to the Mobile *Register*, that the action was taken in anticipation of early availability of Wilson Dam power to municipalities under the Federal power act.

Asked whether the three cities, all within about five miles of Wilson Dam, had entered into any formal agreement as to the drive to obtain cheap government power, Mayor Glenn replied that he would speak only for the city of Florence. He stated that he expected Sheffield and Tuscumbia would take similar action.

California

Move for Gas Rate Fight in Martinez Halts

HIS request for a $300 appropriation denied by the city council at a heated session, Councilman Frank P. Brady on February 10th said his committee would "ring doorbells" for funds to carry on the fight of Martinez and other communities for a gas rate reduction. Brady is chairman of the Martinez Citizens' Committee which last fall opened the campaign to reduce the gas charges in that city. Since that time, the Contra Costa county communities of Pittsburg, Walnut Creek, and Rodeo have joined the movement, and Crockett, Antioch, and Concord are taking some interest in the gas rate reduction proceedings, according to a dispatch in the Oakland *Tribune*.

Excessive Water Rate Return Claimed in Bakersfield

DEMAND for lower water rates in the city of Bakersfield was made in a complaint filed with the California commission on January 31st against the California Water Service Company. The complaint was filed on behalf of the city of Bakersfield by City Manager W. D. Clarke and alleges that the California Company nets approximately 11 per cent return on its investment, which it was said was "far above that provided by law."

Connecticut

Editors Ask Lower Rates for Electricity

FOLLOWING a discussion by Arthur S. Barnes of the Bristol *Press* on February 4th at New Haven, the Connecticut State Editorial Association passed resolutions urging reduction in the rates charged for service by the Connecticut Light and Power Company. The points brought out were to the effect: (1) That the demand and area charges are "so fixed by the light and power company that a reduction in consumption of electricity gives very little relief to the consumer in the amount of his bill"; (2) that the variety and complexity of rate schedules are confusing and that the so-called "area charge" is unfair; (3) that the rate structure should be so arranged that a comparison would be possible with other communities; (4) that the demand charge should be eliminated.

District of Columbia

Street Railway Valuation Proceeding

THE Washington *Star* on February 12th announced that the District of Columbia Public Utilities Commission had completed the valuation of the Capital Traction Company. Although no figures were announced, it was understood the commission's engineers found the value of that company was less than $20,000,000 as "cost of reproduction new," without taking into account any depreciation. This figure was compared with the finding of the District of Columbia Court of Appeals as of January 1, 1925, placing the value of the same property at $25,756,880, without depreciation.

It was also stated that the valuation of the other local railway company, the Washington Railway & Electric Company, will take about two weeks to complete. Chairman Mason M. Patrick of the commission said that owing to the pendency of merger negotiations between the two companies, the commission had not yet made up its mind whether to proceed with the valuations separately or jointly. An act of Congress which was signed by the President last January authorizes the two companies to merge.

Illinois

Utility Rate Fight Continues Unabated

VIGOROUS movements for a reduction of utility rates continue to occupy state-wide as well as local municipal attention in the state of Illinois.

On February 9th, Representative Howard L. Doyle of Decatur announced that he would introduce in the legislature a resolution calling for an investigation by the state commission of public utility rates. The Doyle resolution charging utilities with failure to reduce rates in keeping with the sharp declines in other commodity prices, was blocked earlier in the month by procedural difficulties. The Illinois Municipal League was said to be endorsing the bill.

A Chicago dispatch to *The Wall Street Journal* of February 16th announced that a decision by the Illinois Commerce Commission as to gas rates in Chicago seems within measurable distance after more than a year spent in study of the situation. The commission now hearing oral arguments differs materially in personnel from the one which took the testimony, as the advent of the new Democratic administration in Illinois was followed promptly by the appointment of a new chairman and a number of new commissioners. Oral arguments were postponed in order to give the new members time to familiarize themselves with the case, which arose out of the introduction of natural gas to the Chicago area in October, 1931, and the furnishing to such customers of a new mixed gas, partly natural and partly manufactured. In October, 1931, the commission ordered the company to put into effect temporary experimental rates, lower than those offered by the company.

The city asks a sharp reduction in rates for domestic cooking and water heating, the effect of which on the company's earnings it claims would be largely offset immediately by suggested expense reductions, and ultimately (by 1935) would be offset in full

by growth in business expected to result from the lower rates.

The company's view is that the city's proposal as to rates does not present a practical program, and that the recovery of revenue would only be gradual, while the company meanwhile would obtain revenues considerably short of being able to meet fixed charges.

Meantime, the city of Springfield, through its attorney, Hugh Dobbs, and Lake county customers, filed complaints with the Illinois commission seeking a reduction in gas rates and electric rates, respectively. The natural gas rates under attack in the city of Springfield are charged by the Illinois Power Company, while electricity in Lake county is furnished by the Public Service Company of Northern Illinois. The Lake county customers demanded a 20 per cent reduction in gas and electric rates for private customers and municipalities, and a 10 per cent reduction for commercial users.

A move to obtain substantial reductions in the cost of gas and electricity and telephone service for residents of Canton was instituted on February 7th at a regular meeting of the city council when Alderman Gus Sandberg submitted a motion directing City Attorney Ezra Clark to request an immediate adjustment of rates from the Central Illinois Public Service Company and the Illinois Bell Telephone Company. The motion, as passed, further states that if a satisfactory reply is not received within thirty days, the city would take up the matter directly with the Illinois Commerce Commission.

Iowa

South Sioux City Electric Rates Reduced

CONSUMERS of electricity in South Sioux City were given 20 per cent reduction in rates on March 1st as a result of an economy program undertaken during the last year, Charles Skidmore, mayor of the city, announced February 7th. The announcement came at the conclusion of a meeting of members of the city council. The reduction, Mayor Skidmore said, will represent a savings to South Sioux City residents of $8,000 a year. He said that the council obtained a 25 per cent reduction in rates from the Sioux City Gas and Electric Company the first of the year.

South Sioux City, the mayor said, buys its electricity from the Sioux City Company at wholesale and distributes it to residents at slightly more than cost. A reduction of 12 per cent in the rates was authorized for residents last June.

Reduced Gas Rate Ordinance Introduced in Des Moines

A NEW ordinance providing for an alleged reduction of from 6 to 11 per cent in rates for gas used for cooking was passed by the Des Moines city council on February 6th, when four members approved it. According to the Des Moines *Tribune*, the new rate will go into effect at once and customers will be billed on the therm basis. The new gas, increased in B.T.U. from 530 to 800 per cubic foot, will not be distributed for six or eight weeks, due to the fact that the Des Moines gas company must make alterations on some 33,000 appliances.

The company has been computing bills on both a therm and a cubic-foot basis for the last year, but will now bill only upon a therm basis. Mrs. Francette Miller, commissioner of finance, who has consistently voted against the measure, was the only member of the council opposing the new ordinance.

Kansas

Legislation Planned for Telephone Regulation

FOUR legislative enactments will be presented before the Kansas lawmakers shortly, with a view to securing lower telephone rates, according to a press interview with Hurst Majors, utility commissioner at Manhattan, Kansas, published in the Hutchinson *Herald*. The first bill would enable cities to acquire existing phone systems through condemnation and appraisal proceedings just as all utilities, except the telephone, can be acquired now. The second law would compel long-distance telephone companies to give adequate service to cities with their own systems. A third law would restrict returns earned by telephone companies, and the fourth law would restore to the cities the right to regulate and charge rental for use of streets and alleys. An existing Kansas statute gives the telephone companies at present the right of eminent domain.

Nebraska

Commission Seeks to Resume Phone Rate Inquiry

An application has been filed in the district court of the United States for the district of Nebraska, for modification of an order issued by that court in 1925, restraining the enforcement of an order entered in 1922 by the Nebraska State Railway Commission reducing the rates of the Northwestern Bell Telephone Company, so as to permit the present commission to inaugurate a new rate case. The application was filed by the attorney general of Nebraska, Paul F. Good, and Charles A. Randall, Hugh Drake, and Floyd Bollen, members of the railway commission. The application asks that these officers be substituted for the original defendants, who were their predecessors in office.

The applicants state that the decree of 1925 expressly provided that it should not be deemed to restrain the future exercise of the legislative power of the commission, and it is asserted that the court would be without power to attempt to interfere with the future power and functions of the commission. It has been asserted and claimed, however, the application continues, that the decree is sufficiently broad in its terms to enjoin the defendants and their successors in office from instituting the proceedings and exercising the legislative functions which they desire to institute and exercise for a determination of the value of the telephone company's property and the fixing of reasonable rates for local exchange and toll service. The court, therefore, is asked to enter such additional or supplemental decree as may be necessary to permit the commission to proceed.

Bill Seeks to Abolish Railway Commission

The Nebraska senate approved, on February 18th, a bill (S.66) for a referendum on a constitutional amendment to abolish the state railway commission. An amendment was adopted to provide for turning over the work to a public utilities commission in case the railway commission is abolished. The bill was thereupon sent to the house, which is awaiting a report by a special investigating committee.

New Jersey

Complaint against Sewerage Utility Rates

An investigation of the Atlantic City Sewerage Company by the city's legal department with a view of either obtaining a reduction of rates or increasing the assessment of the company's properties was demanded February 2nd by Samuel Morris, Atlantic City attorney and advocate of municipally owned utilities, in a letter to the city commission. The letter was turned over to the city clerk for filing without comment by the commissioners.

Mr. Morris claimed that if the sewerage company's plant and properties were really worth only the amount they were assessed the state board of public utility commissioners should revaluate the property and reduce the rates by two thirds. On the other hand, he contended that if the properties were worth the amount claimed by the company for rate-making purposes, the assessment should be increased by about 200 per cent and the city should have the benefit of approximately $100,000 in additional taxes. Mr. Morris also called for the erection of a municipally owned sewerage system and electric plant, pointing out that the Reconstruction Finance Corporation is willing to loan money for such self-liquidating projects.

New York

Dean of Public Service Commission Reappointed

George R. Van Namee was reappointed by the governor to a full term of ten years beginning February 1, 1933, as a member of the public service commission, state division of the department of public service, which is the same position Mr. Van Namee formerly held. Commissioner Van Namee is now the oldest member in point of service on the

commission, having served longer as a public service commissioner than any other in the history of the commission since 1908.

Battle against Utility Rates Rages Up-state

THE Buffalo *Times* of February 5th reported that several western New York communities are joining with citizens of Buffalo in combating proposed increase in gas rates including consumers of Belmont and Wellsville. Both the Empire Gas & Fuel Company and the Producers Gas Company are in receipt of certified copies of the complaint filed with the public service commission by the organizations in the areas served by these corporations protesting against the proposed rates. With these certified copies came an order that the complaints must be answered within twenty days.

In Syracuse, Alderman Otto F. Werner introduced a resolution in the common council on February 6th calling upon the commission to make a "sweeping inquiry into the rates of electric, gas, and telephone companies, with a view of bringing them down to a scale consistent with other commodity prices." Adoption of the measure without delay was predicted by the Syracuse *Herald*.

In Rochester, City Councilmen Charles Stanton and Joseph L. Guzzetta promised to continue their fight for an investigation of rates charged by the Rochester Telephone Corporation, although a resolution to that effect introduced by Councilman Stanton was held up by procedural obstacles, according to a news item in the Rochester *Journal*.

In Albany, the Senate Finance Committee, during hearings on the Kleinfeld resolution for a legislative investigation of utility rates of New York city, heard appeals for statewide investigation of utilities and for an investigation of the public service commission. Max Tachna, president of the Allied Civic League of the Rockaways and counsel for the Greater New York Consumers' League, urged the adoption of the Kleinfeld resolution. Senator Thomas C. Desmond (R.) of Newburgh, pointed out that an investigation by a legislative body would be paralleling the duty of the public service commission. Senator Philip M. Kleinfeld, (D.) of Coney Island, author of the resolution, contended that an investigation of the public service commission was uncalled for, but that it was desired to bring about a reduction of rates in New York city by direct legislative action, as was done in 1905–06, as a result of the Hughes investigation.

Stay Denied in Kings County Gas Rate Case

THE right of the public service commission to enforce a rate order fixing temporary emergency gas rates was upheld by Justice Staley, in a special term of the New York Supreme Court on February 17th, denying the application of the Kings County Lighting Company for a stay from enforcement of the temporary order for gas rates fixed by the commission. The company wished to take an appeal to the appellate division. Justice Staley said that the rates so fixed must be reasonable and not confiscatory during the temporary period, but that the suspension of the enforcement of such a commission order may be directed by the court only where it appears that great and irreparable damage would result from its enforcement.

North Dakota

Bills Seeking Lower Utility Rate Introduced

THREE bills, all seeking lower utility rates, have been introduced at the current session of the North Dakota legislature, according to a news item in the Fargo *Forum*. One was introduced in the senate on February 3rd by Senator Bonzer, of Richland, and Senator Bangert, of Ransom; another, drafted by the state board of railroad commissioners, was introduced in the house on February 6th, and a third, sponsored by the Fargo city commission, was laid before the house committee on cities and municipal corporations on February 3rd by M. W. Murphy, city attorney for the city of Fargo.

All three bills provide that utilities must themselves pay for investigation into their rates, but the manner of payment and the methods of collection vary in the different bills.

The Bonzer-Bangert bill would give the commission power to initiate an investigation of utility rates upon a petition signed by 25 per cent of the utility's patrons. The board would be instructed to undergo negotiations with the utility in an attempt to arrive at a reasonable rate, but in no case would such a negotiated rate represent "less than 15 per cent reduction." Failure to agree upon such a rate within thirty days after the petition has been filed would require the commission

immediately and summarily to reduce the rates then in force by 25 per cent, pending the final disposition of the cause.

The bill offered by Mr. Murphy fixes no minimum reduction such as the Bonzer-Bangert bill does. It does require the utility, in case of a complaint filed against it, to deposit an amount in advance sufficient to defray the cost of the necessary investigation.

The railroad commission bill provides for a $40,000 appropriation to the commission to constitute a valuation fund, a revolving fund from which expenses of utility rate investigation will be paid but which will be reimbursed by the utility investigated.

A second bill introduced by Senator Bonzer asks a tax of 10 per cent on the gross receipts of utility companies.

Ohio

Grand Jury Quiz of Council Rate Action Asked

SWITCHING dramatically from a routine discussion to a heated controversy, the Lorain city council on February 6th called for a sweeping grand jury investigation of the circumstances surrounding the negotiation of all utility contracts by previous councils. This surprise action, according to the Lorain *Journal*, came at the demand of former councilman, Alex Munro, who declared that he was "sick and tired of hearing talk and insinuations of graft in connection with rate contracts approved by former councils."

Munro, it was understood, referred specifically to the contract with the Ohio Public Service Company, passed in 1931, in which the service charge was retained. Munro was a member of the council that approved the retention of the service charge and voted in favor of it.

Arbitrators Present Rate Schedule for Oberlin

A FORMAL acceptance of the electric rate schedule from a board of arbitrators appointed some weeks ago, was received and placed on file by the Oberlin council on February 8th. The report was signed by Professor Henry L. Riggs and Howell Wright. Mr. R. Husselman refused to sign the rate schedule and offered a minority report. The new schedule, according to the Oberlin *Tribune*, will save approximately $26,000 or a little over 21 per cent from 1932 bills and will go into effect as of January 1st.

The report fixed the valuation of the company's properties used in the distribution of electric energy at $180,000 which is substantially less than that claimed by the company, but about double the valuation determined by Mr. Husselman in a previous survey, according to the Oberlin *Tribune*.

Oregon

Restriction of Federal Court Jurisdiction over Rate Ordinance

THE New York *Times* of February 12th carried a Portland, Oregon, dispatch which stated in part:

"Public Utilities Commissioner C. M. Thomas suggested not long ago that Congress restrict the jurisdiction of Federal courts in controversies between utilities and state authorities. The suggestion met with the approval of commissioners of several other states, but many practical difficulties were encountered. To overcome these Mr. Thomas has drafted a regulation bill, which has been introduced in the (Oregon) legislature as an administration measure. Although there is considerable opposition to the bill it is admitted that the chances for its enactment are excellent. To gain control over foreign utilities operating in or entering the state, the Thomas bill requires agreement to abide by all state laws and regulations before a franchise will be granted. The eight other major provisions of the measure are: right of the commissioner to approve or reject all budget items for operation; prohibiting payment of service charges to holding companies unless approved by the commissioner; prohibition of all physical mergers or divorcements unless approved; exchange and purchase of stock prohibited; issuance of new securities to be only for acquisition of property; construction and extension of service; improvement or maintenance of service or for refunding; charges for investigation of utility operations by the commissioner to be paid for by the utility investigated; right of the commissioner to invoke contempt proceedings for failure to supply data or information requested, and a recapture clause which would enable the commissioner to take

returns considered to be above a fair profit and apply them toward reduction of rates."

Telephone Service Boycott Suggested

THE New York *Times* of February 12th states that City Commissioner Bennett, of Portland, and a special citizens' committee have proposed a boycott against the telephone company in that city. The news item states:

"The committee is to conduct a postcard campaign to obtain volunteers to have service disconnected at a specified time. The campaign has met with failure so far and there are no indications that any substantial support will be obtained. The proposal brought to light the interesting fact that Oregon has no anti-boycott law on its books."

Pennsylvania

New Utility Regulation Code Proposed

A BILL proposing a new code for the regulation of public utilities in Pennsylvania was introduced in the senate at Harrisburg by Senator McClure, chairman of a committee appointed to investigate public utilities, according to a Harrisburg dispatch of February 22nd published in the *United States Daily*. The measure, according to a statement issued by Senator McClure, embraces practically all of the subjects covered by the numerous bills which have been introduced at the present session, and will not only broaden the present powers of the public service commission, but will extend them into new fields.

Probably the two most important changes have to do with the commission's jurisdiction over rates and over security issues, respectively. Under the present law, utility rates go into effect automatically after being filed thirty days, while under the proposed bill the commission would have power to suspend all increases until investigated and approved. Likewise, under the present law, the commission has no power to control the issuance of securities by utilities. The new code would give such power.

The new bill would also make a mandatory duty upon all public service companies to carry proper and reasonable depreciation accounts. Likewise, the commission will be given power to control transactions, especially financial transactions between utilities and their corporate affiliates.

A strict segregation of accounting for revenues and expenses in connection with the sale of merchandise and other appliances by utilities from corresponding accounts for operating revenues and operating expenses would be required.

Texas

New Law Would Give Commission Telephone Jurisdiction

AN Austin dispatch of February 8th, published in the Houston *Post*, revealed that the house of representatives' committee on municipal and private corporations voted 7 to 5 to give a favorable report to a proposed bill to regulate telephone rates. Under the bill, the Texas Railroad Commission would be empowered to appoint experts to aid cities in their rate contests with telephone companies. A tax of one fourth of one per cent of gross income would be levied on the companies to pay for the cost of such investigation.

Under the bill, the railroad commission would have the power to fix rates in the event the city and utility company could not agree on a fair charge. An appeal from the commission's order to a Federal court would be possible.

Another bill to give the Texas commission authority to regulate electric power, telephone and telegraph companies, and gas rates was introduced in the Texas house of representatives on February 8th.

Virginia

Municipalities Seek to Broaden Rate Inquiry

REPRESENTATIVES of Virginia towns and cities, headed by the mayor of Richmond, met with members of the state corporation commission on February 11th to discuss the broadening of the commission's current investigation of electric light and power rates, to cover telephone, gas, and water companies, and to permit official representatives of the municipalities to assist in the investigations.

Members of the state commission greeted the request for an audience by municipal officials warmly, according to a news item in the Richmond *News-Leader*, and expressed their desire to obtain all information possible that will enable them to expedite their work of reviewing consumers' rates for electric light and power.

West Virginia

Commissioners Defend Existing Regulation and Utility Rate Level

THE cities of the state should not have to bear the expense of defending themselves against utility rate increases, since that is a duty that belongs to the public service commission, C. E. Nethken, member of the commission, informed the Holt committee investigating the utilities' problems for the house of delegates at its session in Charleston on February 9th. Mr. Nethken was questioned by Chairman Rush D. Holt concerning utility rates, particularly as to increases and reasons for allowing them, and by Comitteemen George D. Moore and A. J. Lubliner in regard to other activities of the commission in different rate cases.

Chairman I. Wade Coffman also appeared before the committee and testified that utility rates in West Virginia are comparable to those in other states, although they have not decreased to the same degree as commodity prices. The chairman stated that although the depression has hurt utilities, they have not been injured to the extent of other industrials because they "furnish necessary service."

State Power Authority Proposed in Bill

A BILL to set up a new state water power act has been introduced in the legislature, according to a Charleston dispatch of February 14th to the *United States Daily*. A "Power Authority of West Virginia" of five trustees to develop water power as a state agency would be created under the measure introduced by Senator Earl H. Smith. It would be granted authority to borrow funds for hydroelectric developments.

The Power Authority created by the bill would be a corporation of the state with functions in developing water power similar to those of the abolished State Bridge Commission, which had authority to purchase or build toll bridges and issue bonds upon them with the ultimate object of making them free bridges. The functions of that commission were transferred to the state road commission by the abolishing act. The Power Authority created by the waterpower bill would have authority to study the desirability and means of attracting industries into the state; to develop, maintain, manage, and operate hydroelectric power plants and the sale and distribution of electricity that would be developed, and to negotiate contracts for the sale, transmission, and distribution of the power generated.

Any hydroelectric development, the bill stipulates, shall be "primarily for the benefit of the people of the state as a whole and particularly the domestic and rural consumers to whom the power can economically be made available, and accordingly that sale to and use by industry shall be a secondary purpose to be utilized principally to secure a sufficiently high-load factor and revenue returns which will permit domestic and rural use at the lowest possible rates and in such manner as to encourage increased domestic and rural use of electricity."

The Latest Utility Rulings

Failure to Support Allocation of Business Is Fatal to Confiscation Plea

BACK in 1918, San Antonio, Texas, passed an ordinance fixing telephone rates at $3 a month for residential service, and $7.50 for commercial service. The city in 1928 refused to permit the Southwestern Bell Telephone Company to increase rates. Following this, a Federal district court granted a temporary injunction restraining the enforcement of the ordinance on grounds that it would result in confiscation. Before a final injunction could be issued, however, the Supreme Court decided Smith *v.* Illinois Bell Teleph. Co. (1930) 282 U. S. 133, P.U.R.1931A, 1. This caused the district court to send the case back to the master, who, in May, 1930, reported that a permanent injunction should be issued. The city took exceptions to the master's report. The city contended (1) that the company had failed to exhaust its remedies before the city board of commissioners and that its bill for Federal relief was, therefore, premature; (2) that the company had failed to sustain its burden of proof because it had failed to segregate its properties, revenues, and expenses in such a way as to demonstrate clearly to the Federal court that confiscation of its property would result from enforcement of the ordinance.

The court held against the city on the first argument but in favor of the city on its second contention. The court pointed out that the master had erred in refusing to allocate to interstate toll service any property value between the subscribers' stations and the toll board, —the result of which was held to "greatly enhance the valuation of the exchange property and to minimize that of toll." The court disapproved of similar errors in the allocation of operating expenses in connection with the San Antonio exchange to local operating costs.

The court ruled that the master had also erred in taking the position that the correctness of the apportionment of revenues, expenses, and property values by the company should be sustained solely upon the basis of managerial discretion and that since the city ordinance did not require the inclusion of toll service, no element of value or expense attributable to such service should be included in estimating reasonableness of local rates.

Summing up its rulings, the court concluded that the company had failed to sustain its burden of proof as to the material allegations of its bill, that the exceptions to the master's report should be sustained, and that the injunction should be dissolved and the bill dismissed. *Southwestern Bell Telephone Co. v. City of San Antonio et al.* (*No. 377.*)

Two-part Electric Rate Approved by Connecticut Commission

THE use of the so-called "two-part rate" for electric service, which included in addition to a consumption charge for each unit of service consumed, a flat rate based upon the square-foot "billing" area of each customer served, was held not to be unlawfully discriminatory notwithstanding the fact that it resulted in a difference of rates as between customers liv-

ing in houses of different size. Such was the holding of the Connecticut commission in dismissing a petition by certain consumers of Manchester against alleged discriminatory rates of the Manchester Electric Company. The commission suggested, however, that an optional domestic rate in the form of a limited block rate, with a minimum charge, ought to be established by the company as an alternative to the application of the two-part rate for electric service, in order to eliminate dissatisfaction on the part of customers who objected to the use of the two-part rate.

The rates approved by the commission were calculated to yield a return of approximately 7.5 per cent on the fair value of the electrical property, in view of evidence which disclosed that the utility was exceptionally well managed and economically operated, and was rendering a high standard of service to its patrons. The commission refused, however, to allow the cost of financing to be capitalized in the utility's rate base. The claim of the utility for interest during construction was reduced from 8 per cent to 6 per cent per annum. The utility made no claim for going concern value.

The commission rejected the contention that the total amount of the utility's retirement reserve, as shown on its books, should be taken as the measure of prudent depreciation in determining the rate base, in view of the fact that such a reserve included, in addition to normal depreciation of property from natural causes, provision for future abandonment or replacement thereof on account of inadequacy or obsolescence as well as a provision for retirement, loss of property destroyed by storms, or other casualties. The commission also refused to exclude revenues and expenses from merchandising and jobbing from operating revenues and expenses.

The utility was allowed to include Federal income tax as an operating expense, and to amortize the cost of rate case proceedings over a period of five years. *Spiess et al. v. Manchester Electric Co.* (*5801.*)

Missouri Commission Decides to Act as Arbitrator in Case Involving Municipality

BACK in 1931, the supreme court of Missouri decided that the commission of that state had no jurisdiction over the rates to be charged or the service rendered by municipally owned electric plants. In fact, the Missouri statute which defines "public utilities" subject to the jurisdiction of the commission conspicuously omits any mention of municipalities owning utilities. Consequently when the city of Fulton and the Missouri Power & Light Company recently decided to submit voluntarily to the commission, as a board of arbitration, a controversy over rates for wholesale power supply, the commission had some doubt about its authority to act as an arbitrator. True, the Missouri law did give the commission specific authority to act as an arbitrator in controversies between "public utilities" and persons, but the statute also defined the term "public utilities" as before mentioned.

The commission decided, however, to take jurisdiction pointing out that when municipalities are engaged in manufacturing and selling of electricity, they are "public utilities" in a liberal sense even though they may not be regarded as "public utilities" within the meaning of a statute defining the jurisdiction of the commission over rates, service, and other purely regulatory matters. It was said that the intention of the legislature in a statute defining the powers of the commission to act as a board of arbitration must be liberally construed and any doubts must be resolved in favor of the commission's jurisdiction.

The municipality was accordingly held to be a "public utility" within the meaning of the statute authorizing the commission to act as an arbitrator. Commissioner Ing dissented from the views of his brother commissioners in this respect. The complaint itself arose as the result of a private utility having been inadvertently billed in good faith by the city which furnished wholesale power at a lower rate than the rate publicly declared by the city as applicable to such service. On the merits of the controversy, the commission decided that the private utility was liable for the difference between the rate billed and the amount due under the declared rate. Commissioner Porter dissented from his brother commissioners on the merits of the ruling. *Missouri Power & Light Co. v. City of Fulton.* (*Case No. 7796.*)

Sewerage Utility Rates Reduced in Nevada

SEWERAGE service is one type of utility service that is probably more universally operated by municipalities and other governmental agencies than any other form of utility service in the United States. The sole remaining privately operated public service sewerage system in the state of Nevada appears to be in the county of Nye and serves the town of Tonopah. It was the subject of a recent order of the Nevada commission reducing rates for service by 25 per cent.

One of the unusual points of the commission's opinion was the open suggestion that the county of Nye ought to operate the system itself. The opinion stated:

> "In two different cases before this commission the commission recommended that the county form a sanitary district and purchase and operate the system. After the second recommendation was made in 1922 a special election was scheduled to be held to determine if the county should purchase the system, but due to some unknown cause the election was canceled. . . . All incorporated cities in the state have their own sewerage system, and we see no good reason why the county of Nye has not purchased this system before."

The commission proceeded to compare the cost of the privately operated sewerage service with the cost of such service by the municipally operated plants throughout the state. Comparative figures seem to indicate that such governmental operations resulted in lower rates for the service. One of the points in comparison was the relation of the amount expended for officers' salaries to the general expense account. In the case of the private operator of the sewerage system in Tonopah, general officers' salaries were estimated at 62 per cent of the entire operating expense account, whereas, in the case of other public and private waterworks throughout the state, officers' salaries varied from 5 per cent to a maximum of 39 per cent of the operating expense account.

Although present reproduction cost value of the properties was estimated at slightly less than $80,000, the commission stated:

> "Considering the testimony of record, showing the greatly reduced cost of construction at present-day prices, the heavy reduction in the sale and taxation value of all business and residence property in Tonopah which the company serves, and the fact that business and employment are at a low ebb because all mines and mills in Tonopah are closed, we are of the opinion that the reproduction value of $80,000 used during normal conditions in the camp has become excessive as a rate measure, and that consideration should be given to its commercial value, compared with all other property in the district, as well as its reproduction value and all other elements of value."

The commission finally estimated a rate base of $49,994.10. The reduced rates were calculated to yield a net income of $2,930 for the year 1932, or slightly less than 6 per cent. *County of Nye v. United Utilities & Properties Co.* (*Case 1016.*)

Consolidation of Gas and Electric Rate Proceeding Denied

At the hearing disposing of a complaint by the city of Douglas against alleged excessive electric rates the Arizona commission denied motion by counsel for the utility company to review the rates for both gas and electricity and to consolidate the issues to the end that the two departments might be considered as a unit. The utility based its request upon the assertion that the affairs of the two departments were administered under one management, that to a considerable extent the same personnel is concerned with both activities, and that many of the company's facilities were used in common. It further stated that since the properties of the two departments had a common ownership, the combined net earnings only were significant, and that rates for the two classes of services could not properly be reviewed except together.

The commission was unwilling, however, to admit that the consolidation of such proceedings would better subserve the ends of justice in all cases, or in the particular case at bar. The opinion stated:

> "It quite often happens in cases brought before the commission, that the companies whose rates are being reviewed, like the one in this case, operate two unrelated utility functions. It is true that in two such cases the commission, in the past, permitted the combining of the two operations subject to such conditions and restraints as were found to be necessary. Each such case was considered upon its own particular conditions and merits, and the combination of departments for ratemaking purposes has never been announced as a general policy, and could not be so interpreted. Where such combining has been permitted, it was justified solely by the fact that public interest demanded the continuance of an essential service through the aid of a stronger department, until such time as the weaker utility's condition developed to the point where the orderly processes of regulatory control could be exercised in connection with each department separately."

The commission gave, as a further reason for refusing to consolidate the proceedings, the fact that the company had only recently introduced natural gas and was still engaged in conducting rate experiments for that type of service; and furthermore that the Tenth Legislature had not appropriated one dollar to enable the commission to carry forward valuation work during the last two years, and that in the absence of funds the commission was compelled to abandon altogether or postpone indefinitely all rate proceedings not financed by the interested communities.

One of the unusual features of the case was a theory for estimating cost of construction advanced by the witness for the firm of Burns, McDonald-Smith Engineering Company, of Kansas City, which were engaged for appraisal work by the complaining city. The witness's estimate was based upon the cost of a plant which, he suggested, the city might build either upon the supposition that the city would enter into competition with the defendant utility, or upon the supposition that the city would acquire the defendant's property and occupy the whole field. The commission was not inclined to accept this estimate at its face value in the instant case. It was stated in the opinion of the commission:

> "In so far as it relates to, or constitutes, preliminary negotiations looking toward the actual construction of a municipal plant it has no bearing on the issues in this case. If it is offered on the 'Substitute Plant' theory, it will be so accepted, but we find very little support in law or precedent for the acceptance of this method of valuation in establishing a rate base."

The company's appraisal of its properties amounted to $603,455, while the city appraised it at $306,994. The corporation commission fixed the amount at $429,755—all figures being depreciated. Rates were reduced to a level calculated to yield approximately 7 per cent return on that amount. *City of Douglas v. Arizona Edison Co. (Docket No. 4779-E-420, Decision No. 6518.)*